

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASE NO. 21-RC-264740

3067 ORANGE AVENUE, LLC DBA
ANAHEIM CREST NURSING CENTER,

Employer,

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015,

Petitioner.

**ANAHEIM CREST NURSING CENTER'S REQUEST FOR REVIEW OF THE
REGIONAL DIRECTOR'S DECISION TO ADOPT THE HEARING OFFICER'S
RECOMMENDATIONS ON EXCEPTIONS**

Respectfully submitted,

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COMES NOW for 3067 Orange Avenue, LLC dba Anaheim Crest Nursing Center (“Anaheim Crest” or “Company”), by its attorneys, and, pursuant to § 102.69(c)(2) of the Rules and Regulations of the National Labor Relations Board (“NLRB” or “Board”), files this Request for Review of the Regional Director’s Decision to Adopt the Hearing Officer’s Recommendations on Exceptions (the “Decision”).¹

The Board should grant Anaheim Crest’s Request for Review because the Regional Director abused his discretion in finding that part-time CNA Yesica Rivera (“Ms. Rivera”) should be found eligible to vote notwithstanding the fact that (1) indisputably, Ms. Rivera did not work sufficient hours under the stipulated eligibility standard applicable to this proceeding and established NLRB law; and (2) Ms. Rivera was not on any form of medical leave during the eligibility period, or in the alternative, to the extent that Ms. Rivera could be found to have been on some form of leave, she was only on such “leave” for the first two weeks of the eligibility period and still did not work sufficient hours thereafter to be found an eligible voter.

The Regional Director further abused his discretion and erred in ordering that Ms. Rivera’s ballot should be counted despite the lack of Board precedent supporting the Regional Director’s novel determination that Board law regarding the eligibility of employees who are on an approved medical leave of absence should be extended to employees who are not on any leave of absence, but who are found to work a reduced schedule because of difficulty obtaining child care.

The Regional Director’s significant erroneous factual findings and his departure from officially reported Board precedent, prejudice Anaheim Crest, interfere with the rights of the Company’s employees, and raise substantial questions of law and policy. As fully discussed

¹ Citations to pages in the Decision are “Decision, p. ____.” A copy of the Decision is attached hereto for reference as Attachment A.

below, the Board should grant the Company's Request for Review because the Decision ignored and misapplied controlling precedent. In addition, the Regional Director made findings that were either unsupported by, or contrary to, the evidence adduced at the hearing. Contrary to the conclusions reached in the Decision, Ms. Rivera was not eligible to vote and her ballot should not be counted, consistent with longstanding Board precedent.

The Board should grant the Employer's Request, vacate the Decision in relevant part, and order that Ms. Rivera's ballot must not be counted.

I. STATEMENT OF THE CASE

On August 14, 2020, Service Employees International Union, Local 2015 ("Union" or "Petitioner") filed a representation petition involving all full-time, regular part-time and on-call CNAs, RNAs, cooks, dietary aides, dishwashers, janitors, housekeeping employees, laundry employees and activities employees at the Company's skilled nursing home facility located in Anaheim, California.

On September 24, 2020, the Regional Director issued a Decision and Direction of Election ("DDE") ordering a secret ballot election by mail. The result of the election was that out of a total of 59 ballots cast, 27 were cast for the Union; 25 ballots were cast against the Union; one ballot was challenged by the NLRB as not on the voter list; three ballots were challenged by the Company; and three ballots were challenged by the Union. The challenged ballots were sufficient in number to affect the results of the election. The Union subsequently withdrew its challenges to two ballots, leaving one ballot challenged by the Union.

The NLRB held a hearing on the remaining challenged ballots in this matter on December 1, 2020. In relevant part, the Company argued that the ballot of Ms. Rivera—who was not included on the voter list—should not be counted because Ms. Rivera failed to work sufficient hours to be

eligible to vote based on the stipulated eligibility formula stated in the DDE and pursuant to applicable federal labor law.

On December 14, 2020, the hearing officer issued her Report and Recommendations on Challenges² (“Report”) to the Regional Director of Region 21 of the NLRB. Among other things, the hearing officer recommended that Ms. Rivera’s ballot be opened and counted notwithstanding the fact that she did not work enough hours to be found eligible to vote under applicable NLRB law or the eligibility formula in the DDE. The Regional Director subsequently issued his Decision on February 4, 2021, in which he adopted all of the hearing officer’s recommendations with regard to challenged ballots, including that of Ms. Rivera.

The Regional Director’s decision to count Ms. Rivera’s ballot was based on erroneous factual and legal conclusions that (1) Ms. Rivera was out on “FMLA leave” because she lacked child care during the voter eligibility period; and (2) the Board’s “presumption of eligibility” regarding employees who are on a sick or disability leave should be extended to those who must navigate “childcare constraints” like Ms. Rivera. (Decision, p. 5.)

II. STATEMENT OF FACTS REGARDING CHALLENGED BALLOTS

A. Decision and Direction of Election

In relevant part, the DDE explicitly provided:

Eligible to vote are those employees in the unit who were employed during the **payroll period ending September 15, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

The parties stipulated that also eligible to vote in the election are employees in the unit described above who have worked an average of 4 hours or more per week during the 13 weeks immediately preceding the eligibility date for the election. (DDE, p. 11. [Emphasis in original.])

² A copy of the Report is attached hereto for Reference as Attachment B.

(Decision, p. 4 at fn. 9.) The relevant eligibility period for purposes of this election is June 15 - September 15, 2020. (Decision, p. 2 at fn. 5.)

B. Challenge to the Ballot of Yesica Rivera

The Board agent challenged the ballot of Yesica Rivera on the basis that Ms. Rivera's name was not included in the list of eligible voters. At the hearing, Mr. Jesse Brizuela (A/P payroll) authenticated the Company's business records establishing that Ms. Rivera worked a total of 34.60 hours during the eligibility period—an average of only 2.66 hours per week. (Tr.³ 33-34.)

At the hearing, the Union offered work schedules it claimed to have received from employees. The Union failed to establish the accuracy of these documents, one of which incorrectly indicated that Ms. Rivera was on "FMLA leave" in June 2020. (Petitioner's Exhibit⁴ [hereinafter "Pet. Exh."] 8, p. 1.) Although Union counsel repeatedly affirmed "we will have corroborating evidence later" (Tr. 95, 107), it did not deliver on that representation when it had the opportunity to do so.

On cross-examination, the Union's witness who claimed to have received the schedules from employees admitted he has no knowledge with regard to the whether the schedules accurately reflect the reality of the workplace. (Tr. 124-127.) Significantly, the Union also called Ms. Rivera to testify, but failed to elicit any testimony to show that the schedules were accurate, much less with regard to any notations about "FMLA leave" for Ms. Rivera in June 2020. In fact, Ms. Rivera did not attest to being on FLMA leave at any time, nor did the Union introduce any documentary evidence such as copies of FMLA leave paperwork or written communications with management relating to FMLA leave for this employee. Ms. Rivera only testified that she stopped working at the facility in

³ Citations to the official hearing transcript are referenced herein as "Tr." followed by the relevant page number(s). Cited excerpts from the official hearing transcript are compiled and attached hereto for reference as Attachment C.

⁴ Cited exhibits from the hearing are compiled and attached hereto for reference as Attachment D.

April because she needed to stay with her children. (Tr. 173-174.) Ms. Rivera also testified that she lets the facility know when she wants to work—whether it is one, two or zero days per week—and the facility accommodates her availability. (Tr. 173-177.)

C. The Regional Director’s Decision to Count Ms. Rivera’s Ballot

The Regional Director concluded that:

- Ms. Rivera did not work enough hours during the eligibility period to be eligible to vote under *Davison-Paxon* or the stipulated eligibility formula in the DDE.
- The hearing officer correctly presumed Ms. Rivera “would have continued with her regular part-time schedule had the pandemic not caused her to take temporary leave to care for her children for a brief period of time, and then caused her to change her schedule until she could coordinate childcare for her children.”
- The hearing officer correctly applied to Ms. Rivera the “well-established Board standard which ‘presumes an employee on sick or disability leave to be eligible to vote absent an affirmative showing that the employee has resigned or been discharged.’”
- Board law does not “contemplate Rivera’s particular childcare circumstances caused by the pandemic.”
- Ms. Rivera should be deemed eligible to vote because she “took FMLA leave to care for her children, all the while communicating with her Employer and with the intent to return to work once she had navigated the childcare constraints caused by the pandemic.”

- “[T]he Employer failed to rebut the presumption that otherwise eligible employees who are on leave are eligible to vote, because the record contains no evidence that Rivera resigned or was discharged.”

(Decision, pp. 4-5.)

The Regional Director also implicitly found that despite the lack of any record evidence to show that Ms. Rivera was even arguably on FMLA leave after the first two weeks of the eligibility period—and despite the Regional Director affirming the hearing officer’s finding that Ms. Rivera took a “temporary leave” in June 2020 and thereafter *changed her schedule* when she *resumed working*—it was appropriate to presume that Ms. Rivera somehow remained on “FMLA leave” after she returned to work. (Decision, p. 5.) Therefore, the Regional Director ordered that Ms. Rivera’s ballot should be opened and counted. (Decision, p. 7.)

III. ARGUMENT

As explained below, under established Board law the Regional Director erred in finding that Ms. Rivera’s ballot should be counted notwithstanding the undisputed fact that Ms. Rivera did not work sufficient hours to be eligible to vote. During the eligibility period, Ms. Rivera was not on leave relating to her own illness or the illness of a family member, on vacation leave, or on temporary layoff status, such that she could be found eligible to vote (notwithstanding her lack of sufficient hours) under NLRB law and/or the stipulated eligibility requirements in the DDE. There is no Board law to support the Regional Director’s novel determination that Ms. Rivera should be afforded a “presumption of eligibility” because she was “granted leave for childcare reasons” during the eligibility period. To the extent the Regional Director erroneously concluded that Ms. Rivera was on “FMLA leave” for “childcare reasons,” the record evidence only suggests Ms. Rivera could be found to have been on such leave for the first two weeks of the eligibility period, from June 15 – 30, 2020.

There is no record evidence whatsoever to support the Regional Director’s implicit finding that Ms. Rivera was simultaneously “on leave” and yet also working during the majority of the eligibility period, after she returned to work (*i.e.*, from July 1 – September 15, 2020) and during which time the work schedules no longer (incorrectly) indicated “FMLA” next to Ms. Rivera’s name.

Even assuming Ms. Rivera could properly be presumed to have been on “leave” in June—which the Company vigorously disputes—her work record for the rest of the eligibility period makes clear that Ms. Rivera would not have worked sufficient hours even if she had not been on “leave” during the first two weeks of the period. Under the circumstances present in this case, the Regional Director committed clear factual and legal error in reaching a determination that Ms. Rivera was eligible to vote.

A. The Regional Director Erred Because Ms. Rivera Is Not Eligible to Vote Under the Relevant Legal Standard.

The Regional Director’s recommendation that Ms. Rivera’s vote should be counted is in error, because Ms. Rivera is not eligible to vote. The NLRB has long held the *Davison-Paxon* eligibility formula is the “standard” means for the Board to determine the voting eligibility of a part-time employee such as Ms. Rivera:

The standard for determining eligibility of regular part-time employees, in the absence of special circumstances, is set forth in *Davison-Paxon Co.*, 185 NLRB 21 (1970). In that case, the Board held that an employee is eligible to vote if that employee “averages 4 hours or more per week for the last quarter prior to the eligibility date.” [...] The Board has explicitly held that the “last quarter prior to the eligibility date” refers to the 13-week period immediately before the eligibility date. [...] This approach allows for an employee’s eligibility to be evaluated based on a period that is closer in time to the election eligibility date, which in turn provides a more accurate and up-to-date assessment of the unit’s composition.

Woodward Detroit CVS, LLC, 355 NLRB 1115, 1115 (2010); *see also S. Coast Hospice, Inc.*, 333 NLRB 198, 198 at fn. 3 (2001) (“Absent a showing of special circumstances, part-time employees who do not satisfy the Davison-Paxon formula are ineligible to vote.”); *Columbus Symphony*

Orchestra, Inc., 350 NLRB 523, 524 (2007) (“The Board’s longstanding and most widely used formula to determine voting eligibility for part-time or on-call employees is the Davison-Paxon formula, under which an employee is considered to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if that employee regularly averages 4 or more hours of work per week for the last quarter prior to the election eligibility date. The Board has made it clear that the Davison-Paxon formula should be followed absent a showing of special circumstances.”)

The *Davison-Paxon* standard does not take in account hours worked outside the eligibility period. *See, e.g., Hardy Herpolsheimer's*, 227 NLRB 652, 652 (1976) (“The five employees found by the Hearing Officer to be ineligible all averaged more than 4 hours work per week during the 13-week period immediately prior to the eligibility date. Accordingly, we find that these employees are regular part-time employees who are eligible to vote.”) This approach is also consistent with the fact that under well-established Board law, an employee who is hired after the eligibility cutoff date will not be found eligible to vote, regardless of the number of hours they may work. *See, e.g., Atlantic Indust. Constructors, Inc.*, 324 NLRB 355, 359 (“While the evidence may tend to support the Employer’s assertion that the new hires may have worked a number of days more than certain of the employees whose names were included on the *Excelsior* list, such evidence does not detract from the fact that the new employees simply were not employed as of the official eligibility date.”)

In finding that Ms. Rivera was eligible to vote, the Regional Director cited *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 819-820 (2003) for the proposition that the Board does not merely apply the *Davison-Paxon* formula to determine eligibility, but also “takes into consideration such factors as regularity and continuity of employment, tenure of employment, similarity of work duties, and similarity of wages, benefits, and other working conditions” to

determine whether part-time employees are eligible to vote. (Decision, p. 4.) The Regional Director erroneously failed to recognize that the *Davison-Paxon* formula is part and parcel of the NLRB's analysis regarding the regularity of employment. In fact, in *Arlington Masonry*—the very case cited by the Regional Director—the Board cited *Davison-Paxon* and unequivocally stated, “The standard frequently used by the Board to determine the regularity of part-time employment is to examine whether the employee worked an average of 4 or more hours a week in the quarter preceding the eligibility date.” 339 NLRB at 819.

B. The Regional Director Erred Because Ms. Rivera Is Not Eligible to Vote Under the Parties' Stipulation and the DDE.

In deciding that Ms. Rivera was eligible to vote because her failure to work sufficient hours during the eligibility period was due to a lack of child care, the Regional Director also improperly disregarded the express voter eligibility requirements to which the parties had stipulated, as set forth in the DDE.

The Board will reject a Regional Director's failure to adhere to the plain terms of an agreed-upon eligibility standard where the Regional Director's determination regarding voter eligibility “requires an interpretation that goes beyond the plain meaning of the stipulation and overrides the written expression of the parties' intent.” *Windham Cmty. Mem. Hosp.*, 312 NLRB 54, 54 (1993). Here, the Regional Director's erroneous conclusion that Ms. Rivera is eligible to vote “requires an interpretation that goes beyond the plain meaning of the stipulation and overrides the written expression of the parties' intent,” as affirmed by the plain terms of the DDE. The DDE explicitly provides that eligible employees include those “who did not work during that period because they were ill, on vacation, or temporarily laid off.” (Decision, p. 4 at fn. 9.) There is no provision that would allow employees who did not work enough hours “because they lacked child care” to vote. Therefore, it was clear error for the Regional Director to order that Ms. Rivera's ballot should be

opened and counted notwithstanding the fact that there is no basis for a finding that Ms. Rivera is eligible to vote in the first instance.

Because Ms. Rivera did not work an average of 4 hours or more per week during the 13 weeks immediately preceding the September 15 eligibility date, she is not eligible to vote. Nor is it significant that Ms. Rivera may have worked different hours at times outside of the eligibility period, whether afterward or years prior to the eligibility period. Pursuant to the parties' stipulation, the DDE and the NLRB law cited above, Ms. Rivera's vote should not be counted.

C. The Regional Director's Finding that Ms. Rivera Was On "FMLA Leave" During the Eligibility Period Was Clear Error.

1. The Record Evidence Establishes Ms. Rivera Was Not on "FMLA Leave" At Any Time During the Eligibility Period.

The Regional Director's factual findings regarding the material issue of whether Ms. Rivera was on "FMLA leave" during the eligibility period are demonstrably contrary to the record evidence.

There is no record evidence to support a finding that Ms. Rivera failed to work sufficient hours during the eligibility period for any reason that could entitle her to receive FMLA leave. Nor did Ms. Rivera testify that she was ever on FMLA leave. Rather, Ms. Rivera stated that consistent with her usual practice, she let her supervisor know when she would and would not work, and she was scheduled according to her wishes at all times, including but not limited to the weeks during the eligibility period. (Tr. 173-179.) Ms. Rivera unequivocally testified that she stopped working in April 2020 because she did not have child care, and then informed her employer that she wanted to resume working on June 22. (Tr. 173-174; Pet. Exh. 9, p. 1.) Contrary to the Regional Director's findings, Ms. Rivera presented no testimony to even suggest, much less establish, that she was ever on an "FMLA leave," or that she had been "granted leave" of any kind. Indisputably, a lack of child

care is not a basis for a grant of FMLA leave. Regardless, it is undisputed that Ms. Rivera requested to resume working at the facility in June and in fact began working again on July 2, 2020. Therefore, at that point she had child care and there is no record evidence to support a finding that Ms. Rivera was on “FMLA leave” for “childcare reasons” after June 2020.

Moreover, Ms. Rivera testified that she started working more often in November 2020 not because she suddenly obtained even more child care, but because she needed money. (Tr. 175.) Ms. Rivera’s testimony shows that when she wanted to work more, she was able to do so for reasons unconnected to whatever child care issues she may have experienced in June. The Regional Director’s implicit finding that Ms. Rivera was on “FMLA leave” throughout the eligibility period because she lacked child care is unsupported by the evidence and must be rejected.

2. The Regional Director Erroneously Found the Schedules Introduced By the Union Establish Ms. Rivera Was on FMLA Leave in June 2020.

To the extent the Regional Director found that Ms. Rivera was on FMLA leave based only on a single notation on demonstrably inaccurate employee schedules, this finding was clear error. It was also error for the Regional Director to find that there was no “documentary evidence” to “refute” the “authenticity” of the schedules. (Decision, p. 7.) To the contrary, the fact that the schedules cannot be relied upon to show that Ms. Rivera was on “FMLA leave” is established by the complete lack of any reference to “FMLA leave” relating to dietary employee Moun Suk Kim, who indisputably was on an approved FMLA leave throughout the eligibility period. (Pet. Exh. 2.) That Ms. Kim was on an approved FMLA leave at all relevant times was established by the Company’s business documents (*i.e.*, medical leave paperwork and doctor’s note for Ms. Kim) as well as direct testimony from a management witness that Ms. Kim was on an approved medical leave of absence. Yet the schedules do not show “FMLA” for Ms. Kim, which necessarily compels

the conclusion that they are not a reliable source of evidence to support a finding that an employee is on FMLA leave.

Significantly, Ms. Rivera testified at the hearing and never once referred to or affirmed that she was on any form of “FMLA leave” at any time relevant to this proceeding. It was clear error for the Regional Director to find that Ms. Rivera was an approved FMLA leave based on nothing more than an unauthenticated notation on a schedule that is demonstrably inaccurate with regard to whether an employee is on FMLA leave.

3. Text Messages From Ms. Rivera’s Supervisor Do Not Indicate That She Was on FMLA Leave in June 2020.

To the extent the Regional Director’s finding that Ms. Rivera was on “FMLA leave” was based on text messages exchanged between Ms. Rivera and a supervisor in May 2020, this finding was clear error because there is nothing in the text messages to even suggest, much less establish, that Ms. Rivera was ever on “FMLA leave” during the eligibility period. The text messages only indicate that Ms. Rivera was following her usual practice of telling her supervisor when she would and would not work, and that she had not been working because she did not have child care. (Pet. Exh. 9, p. 1.) The text messages contain no reference to any form of “leave,” much less “FMLA leave.” Nor do the messages suggest any facts that could support a finding that Ms. Rivera was even eligible to take FMLA leave to care for herself or a sick family member.

Based on a single, ambiguous reference in the text messages, the hearing officer erroneously concluded that Ms. Rivera’s supervisor “advised her that he would complete an extension form for her and directs her to sign and fax it back,” which the hearing officer interpreted as a reference to a “leave extension form” even though there is no record evidence whatsoever to support such a finding. (Report, p. 6:2-5.) Certainly Ms. Rivera did not attest to being on leave or completing any leave-related paperwork. The text messages from her supervisor first vaguely

refer to the need for Ms. Rivera to complete an unspecified “extension”—with no reference to any “leave”—and then clarifies the “form” the supervisor had completed for Ms. Rivera to sign and fax was “your renewal form for cna.” (Pet. Exh. 9, p. 1.) In other words, Ms. Rivera’s supervisor was requesting she sign off on state-required paperwork for her professional credential (certified nurse assistant, or “CNA”) that he had completed. The text message did not refer to any leave paperwork, as the hearing officer mistakenly surmised.

The Regional Director found that the “text exchange” was “somewhat vague,” but erroneously credited the hearing officer’s interpretation of it anyway. (Decision, p. 7.)

4. The Regional Director Erred By Implicitly Finding Ms. Rivera Was on “FMLA Leave” After June 2020.

Even if the schedules were reliable evidence of FMLA leave status for Ms. Rivera—which the Company vigorously disputes—the Regional Director erred by implicitly finding that Ms. Rivera was on “FMLA leave” from July 1 – September 15 (*i.e.*, throughout the entire eligibility period).

To the extent the Regional Director’s finding that Ms. Rivera was on “FMLA leave” during the eligibility period is based on an unauthenticated schedule and ambiguous text messages from Ms. Rivera’s supervisor, all such evidence relates solely to the first two weeks of the eligibility period, at the end of June 2020.

Unlike the June 2020 schedule that the Union introduced, there is no “FMLA leave” notation for Ms. Rivera on the schedules for July through September. (Pet. Exh. 8, pp. 2-4.) Even the disputed text messages from Ms. Rivera’s supervisor were sent in May 2020 and only relate to Ms. Rivera not working in June. (Pet. Exh. 9.) It is undisputed that Ms. Rivera resumed working at the beginning of July 2020, after she completed COVID-19 testing at the end of June. (_____) Therefore, the Regional Director erred by implicitly finding that Ms. Rivera was on any form of

“leave” after June 2020, for purposes of his improper decision to extend a “presumption of eligibility” to Ms. Rivera as explained below.

D. The Regional Director’s Decision to Extend a “Presumption of Eligibility” to Ms. Rivera is Contrary to NLRB Law.

The Regional Director’s decision to extend a “presumption of eligibility” to part-time employees who do not work sufficient hours to be eligible to vote due to “childcare reasons” is contrary to applicable Board precedent. The case law the Regional Director cites in support of this novel proposition is clearly distinguishable. In *Red Arrow Freight Lines*, 278 NLRB 965 (1986), the Board found an employee who was on disability leave throughout the eligibility period was eligible to vote. Likewise, in *Home Care Network, Inc.*, 347 NLRB 859 (2006), the Board found three employees who did not work during the eligibility period were eligible to vote because they were on authorized leaves for medical reasons at all relevant times. The Board has not extended the *Red Arrow* line of cases to circumstances such as those involved in the present case—*i.e.*, where an employee is not on any leave at all, but is actively working throughout the majority of the eligibility period.

The Decision illogically compares Ms. Rivera to “an employee who becomes disabled, or becomes ill and is forced to take leave from work” (Decision, p. 5) even though Ms. Rivera worked (insufficient hours to be eligible to vote) throughout the majority of the eligibility period. Unquestionably, Ms. Rivera was not on a medical leave of absence, but only claimed she needed to stay home with her daughters from April until June because she did not have child care. Critically, even if the Regional Director properly found that Ms. Rivera was on “FMLA leave”—which the Company vigorously disputes—the only record evidence that could support such a conclusion is limited to the first two weeks of the eligibility period, at the end of June 2020. Therefore, even if it were proper to extend the *Red Arrow* line of case law to circumstances in which an employee has

been granted “leave” for child care reasons—which the Company vigorously disputes—the Regional Director improperly extended this case law to Ms. Rivera. At most, the record evidence could only establish Ms. Rivera was potentially on “leave” during the first two weeks of the eligibility period, from June 15 – 30. There is no documentary or testimonial evidence to support a finding that Ms. Rivera was ever on “leave” after June 30. Neither *Red Arrow* nor *Home Care* supports the Regional Director’s apparent determination that Ms. Rivera should be afforded a “presumption of eligibility” when she failed to work sufficient hours during the period after she returned to work from “leave.”

Nor is there any record evidence to support a finding that Ms. Rivera would have worked sufficient hours if she had worked during the first two weeks of the eligibility period, when the schedules incorrectly indicated that she was on “FMLA leave.” Ms. Rivera’s time records establish she worked a total of 34.20 hours during the 11-week period between July 1 and September 15—an average of 3.11 hours per week. (Respondent’s Exhibit 5.) Had she not been “on leave,” it could reasonably be found that Ms. Rivera would have similarly worked an average of 3.11 hours per week during the last two weeks of June.

Therefore, even if Ms. Rivera is correctly presumed to have been on an approved leave through the end of June 2020—and even if her lack of work hours in June 2020 is not “held against” her—Ms. Rivera did not work sufficient hours for her vote to be counted. The Regional Director’s findings to the contrary are unsupported by the record evidence and established NLRB law.

IV. CONCLUSION

For the reasons set forth above, the Company respectfully requests the Board grant this Request for Review, vacate the Regional Director’s Decision in relevant part, and order that Ms. Rivera’s ballot must not be counted.

Dated this the 5th day of March, 2021.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: /s/ Maria Anastas

Maria Anastas

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ATTACHMENT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

**3067 ORANGE AVE, LLC DBA ANAHEIM CREST
NURSING CENTER**

Employer

And

Case 21-RC-264740

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 2015**

Petitioner

DECISION TO ADOPT THE HEARING OFFICER'S RECOMMENDATIONS

Pursuant to a Decision and Direction of Election¹ which issued on September 24, 2020,² (DDE), an election was conducted to determine whether a unit of employees working for 3067 Orange Ave., LLC dba Anaheim Crest Nursing Center (herein the Employer)³ located in Anaheim, California wanted to be represented for the purposes of collective bargaining by the Service Employees International Union, Local 2015 (herein the Petitioner or Union). That voting unit (the Unit) consists of:

Included: All full-time, regular part-time, and on-call CNAs, RNAs, Cooks, Dietary Aides, Janitors, Housekeeping employees, Laundry employees, and Activity employees employed by the Employer at its facility located at 3067 West Orange Avenue, Anaheim, California.

Excluded: All other employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

In accordance with the DDE, the Region mailed out ballots to employees in the Unit on October 2. Ballots were to be received by the Regional Office by October 27. All ballots were counted by Region 21 on October 27. The Tally of Ballots showed that 27 votes were cast for the Petitioner, and 25 votes were cast against representation. There were 7 challenged ballots, a number sufficient to affect the results of the election. Two of the challenges were later withdrawn by the Petitioner.⁴

On November 24, the Regional Director ordered a hearing to determine whether each of the remaining 5 challenged ballots, a sufficient number of ballots to affect the outcome of the election, should be opened and counted. The case was assigned to Administrative Law Judge

¹ The parties waived their right to a hearing and entered into a Stipulation of Record for Pre-Election Hearing on the sole issue of whether the election should take place manually or by mail ballot in light of the COVID-19 pandemic. This DDE also included stipulated election arrangements agreed to by the parties.

² All dates refer to 2020, unless otherwise stated.

³ The Employer operates a skilled nursing home.

⁴ The details of the two withdrawn challenges are discussed in the Order Directing Hearing on Challenges dated November 24 which is included in the record as Board Exhibit 1(a).

Kimberly Sorg-Graves (herein ALJ Sorg-Graves), through the Division of Judges, to conduct the hearing and prepare a report and recommendations. The hearing was conducted on December 1 via Zoom videoconference due to the continuing compelling circumstances caused by the COVID-19 pandemic.

During the hearing, ALJ Sorg-Graves considered the Petitioner's challenge to the ballot of Moun Suk Kim (herein Kim) and the Employer's challenges to the ballots of Adolfo Toral (herein Mr. Toral), Maria Toral (herein Mrs. Toral), Yesica Rivera (herein Rivera), and Samantha De Ocampo (herein De Ocampo). As for Kim, the Union contended that Kim was no longer employed on the eligibility date, and therefore, the ballot cast by Kim should not be opened and counted. The Employer contended that Kim's ballot should be opened and counted because she was eligible as a full-time employee in the unit who had been on medical leave.

With respect to the ballots cast by Mr. Toral, Mrs. Toral, and Rivera, the Employer contended that those ballots should not be opened and counted, regardless of whether those employees were considered part-time or on-call employees, because those employees did not work an average of 4 hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.⁵ In support of this contention, the Employer relied upon the formula set forth in *Davison-Paxon Co.*, 185 NLRB 21, 23-24 (1970).

Finally, the Employer asserted that its challenge to the De Ocampo ballot should be sustained because her mother filled out the ballot, signed the envelope, and mailed it to the Regional office without proper authorization. In response to that position, the Petitioner contended that De Ocampo authorized her mother to complete her ballot, and therefore, it should be opened and counted.

On December 14, following the hearing on the issues described above, ALJ Sorg-Graves issued her Report and Recommendations on Challenges (ALJ Sorg-Graves' Report) recommending that the ballots of Kim, Mr. Toral, Mrs. Toral, and Rivera be opened and counted, along with the two ballots for which the Petitioner withdrew its challenges as noted in the Order Directing Hearing and Notice of Hearing on Challenged Ballots in this matter.⁶ ALJ Sorg-Graves also recommend that the ballot of De Ocampo be voided and not be opened or counted.

On January 5, 2021, the Employer timely filed exceptions, and a brief in support thereof (Employer's Exceptions), to ALJ Sorg-Graves' findings and recommendations solely with respect to the challenge to Rivera's ballot. Although the Petitioner did not file exceptions, it timely submitted an answering brief in opposition to the Employer's Exceptions on January 12, 2021.

I have carefully reviewed ALJ Sorg-Graves' rulings made at the hearing and find that they are free from prejudicial error. Accordingly, ALJ Sorg-Graves' rulings are affirmed.

⁵ The eligibility period was from June 16 to September 15 (herein eligibility period).

⁶ See Board Exhibit 1(a).

In considering the Employer's Exceptions, I rely on ALJ Sorg-Graves' factual findings and credibility resolutions. To the extent a specific contention, exception, or factual circumstance is not addressed in the below discussion, I have concluded that ALJ Sorg-Graves adequately addressed that item or issue and that her conclusion requires no comment on my part. The Board's established policy is to not overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the reviewer that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957).

I have considered the evidence and the arguments presented by the parties and, as discussed below, I agree with ALJ Sorg-Graves' recommendation to overrule the challenge to Rivera's ballot and find no merit to the Employer's Exceptions. As to the challenges to the ballots of Mr. Toral, Mrs. Toral, Kim and De' Ocampo's ballots, I adopt pro forma ALJ Sorg-Graves' recommendations to sustain the challenge to De Ocampo's ballot and overrule the remaining challenges in the absence of exceptions to her recommendation. Accordingly, I will order that the ballots of Kim, Mr. Toral, Mrs. Toral, and Rivera be opened and counted, along with the two ballots for which the Petitioner withdrew its challenges as noted in the Order Directing Hearing and Notice of Hearing on Challenged Ballots in this matter. I will also order that the ballot of De Ocampo be voided and not be opened or counted.

I. THE EMPLOYER'S EXCEPTIONS

The Employer filed nine (9) exceptions relating to ALJ Sorg-Graves' findings and recommendations to overrule the challenge to Rivera's ballot. In sum, the Employer argues that ALJ Sorg-Graves ignored applicable Board precedent and the parties' stipulated eligibility agreements contained in the DDE⁷ by recommending that Rivera's ballot be counted despite the undisputed fact that Rivera did not work sufficient hours to be eligible to vote. The Employer further contends that ALJ Sorg-Graves erred in finding that during the eligibility period, Rivera was in an FMLA or leave status such that she could be found eligible to vote under the applicable Board law and/or the stipulated eligibility requirements in the DDE.

For the reasons set forth in ALJ Sorg-Graves' Report and discussed below, I agree that the record evidence and applicable Board precedent supports a finding that Rivera was eligible to vote and that her ballot should be opened and counted.

II. ANALYSIS

A. ALJ Sorg-Graves Correctly Found that Rivera was Eligible to Vote Under the Relevant Legal Standard, the Parties' Stipulation, and the DDE.

The Employer first argues that ALJ Sorg-Graves failed to adhere to the appropriate legal standard concerning Rivera's eligibility to vote which the parties agreed to use as reflected in the stipulated eligibility requirements included in the DDE. The Employer's Exception No. 9 relates to this argument. In Exception No. 9, the Employer challenges ALJ Sorg-Graves' finding that Rivera's ballot should be opened and counted notwithstanding the undisputed fact that Rivera's

⁷ Although the DDE was not included as an Exhibit by the parties, ALJ Sorg-Graves took judicial notice of the DDE.

“failure to work sufficient hours was not due to any reason encompassed by the stated eligibility requirements in the DDE.” In support of this contention, the Employer relies upon the formula set forth in *Davison-Paxon Co.*, 185 NLRB 21, 23-24 (1970) in which the Board found that an employee must average at least 4 hours of unit work per week during the last quarter (13 weeks) immediately prior to the election eligibility date to be eligible to vote.⁸ Similar stipulated language is also included in the DDE.⁹

I find this argument and this exception to be without merit. The Employer errs in limiting its analysis solely to the *Davison-Paxon* formula. Although ALJ Sorg-Graves acknowledged the relevancy of the *Davison-Paxon* formula to the facts at hand, she also appropriately applied the other applicable Board law at play here, namely the Board’s standard set forth in *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 819-820 (2003) which “takes into consideration such factors as regularity and continuity of employment, tenure of employment, similarity of work duties, and similarity of wages, benefits, and other working conditions.” Id citing *Muncie Newspapers, Inc.*, 246 NLRB 1088, 1089 (1979). “In short, the individual’s relationship to the job must be examined to determine whether the employee performs unit work with sufficient regularity to demonstrate a community of interest with remaining employees in the bargaining unit.” Id citing to *Pat’s Blue Ribbons*, 286 NLRB 918 (1987).

ALJ Sorg-Graves correctly applied the *Arlington Masonry* factors to Rivera’s employment circumstances which factors included that Rivera was a long term employee with 10 years of tenure with the Employer, who switched to a part-time schedule only 2 years ago due to having children and then worked a regular part-time schedule of 3 days per week up until the COVID-19 pandemic hit which caused her to initially take some leave and then reduce her schedule temporarily but always with the intent to return to work. As ALJ Sorg-Graves correctly determined, these factors certainly weigh in favor of demonstrating a community of interest between Rivera and her fellow employees in the bargaining unit. Thus Rivera, a regular part time bargaining unit employee had the right to cast a vote and for that vote to be counted in this election.

ALJ Sorg-Graves presumes in her decision that Rivera would have continued with her regular part-time schedule had the pandemic not caused her to take temporary leave to care for her children for a brief period of time, and then caused her to change her schedule until she could coordinate childcare for her children. Thus, although Rivera did not meet the black and white *Davison-Paxon* formula of working 4 hours per week during the quarter leading up to September 15, ALJ Sorg-Graves correctly applied the well-established Board standard which “presumes an employee on sick or disability leave to be eligible to vote absent an affirmative showing that the employee has resigned or been discharged.” *Home Care Network, Inc.*, 347 NLRB 859 (2006), citing *Red Arrow Freight Lines*, 278 NLRB 965 (1986). See also *Pepsi-Cola Co.*, 315 NLRB

⁸ See also *Woodward Detroit CVS, LLC*, 355 NLRB 1115 (2010).

⁹ The language the Employer references in this regard comes from page 11 of the DDE and states that: “The parties stipulated that also eligible to vote in the election are employees in the unit described above who have worked an average of 4 hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.” The language in the DDE also states: “Eligible to vote are those employees in the unit who were employed during the payroll period ending September 15, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.”

1322 (1995). While the current Board law does not appear to presently contemplate Rivera's particular childcare circumstances caused by the pandemic, a similar rationale to the *Red Arrow* line of cases would certainly be applicable as Rivera took FMLA leave to care for her children, all the while communicating with her Employer and with the intent to return to work once she had navigated the childcare constraints caused by the pandemic. Thus, ALJ Sorg-Graves was correct in extending the presumption of eligibility to Rivera, and the Employer failed to rebut the presumption that otherwise eligible employees who are on leave are eligible to vote, because the record contains no evidence that Rivera resigned or was discharged.

Accordingly, the Employer's Exception No. 9 and its arguments in support thereof are without merit. The Employer's narrow focus on the *Davison-Paxon* standard and its failure to acknowledge the other applicable Board law at play here was in error. ALJ Sorg-Graves correctly considered and applied the applicable Board law to the matter at hand.

B. ALJ Sorg-Graves Decision to Extend a Presumption of Eligibility to Rivera was Proper.

As a continuation of the argument above, the Employer additionally argues that ALJ Sorg-Graves improperly extended the *Red Arrow* line of cases to Rivera's circumstances noting that the *Red Arrow* line of cases refer only to leaves of absence for medical reasons such as sick or disability leave. The Employer's Exception No. 7, relates to this contention. Like the related argument and exception discussed above, I also find these contentions and this exception to lack merit. As discussed above, although it is true there is not yet an exact case on point to govern the childcare difficulties that have fallen on families due to a novel global pandemic, the policies behind the *Red Arrow* line of cases are still applicable. Rivera, like an employee who becomes disabled, or becomes ill and is forced to take leave from work, was put in a position of having to take unplanned leave from her job due to the childcare constraints caused by the pandemic. The Board's focus in *Red Arrow* and its progeny is on whether there is a reasonable expectation that the employee will return to work. In *Red Arrow* supra at 965 the Board stated:

The fundamental rule governing the eligibility of an employee on sick or maternity leave is that he or she is presumed to continue in such status unless and until the presumption is rebutted by an affirmative showing that the employee has been discharged or has resigned.

The record evidence shows that Rivera always intended to return to work when she initially took leave once the pandemic hit. Rivera then returned to work, albeit on a temporarily reduced schedule while she sorted out her childcare needs caused by the pandemic. At no point did Rivera lose her connection to her employment. The Employer failed to show that Rivera's employment ever ended and failed to proffer any evidence to contradict the evidence presented by Rivera and the Petitioner regarding Rivera's leave status. Thus ALJ Sorg-Graves was correct with applying the *Red Arrow* rationale to the facts of this case which, while not identical to the Board cases before it, are certainly applicable principles to the facts at hand.

In light of the above, the Employer's Exception No. 7 and the arguments in support thereof are without merit. ALJ Sorg-Graves was correct in extending the *Red Arrow* line of cases to Rivera's circumstances.

C. ALJ Sorg-Graves' Finding that Rivera was on "FMLA Leave" During the Eligibility Period was proper.

The bulk of the Employer's exceptions and arguments in its brief fall under the Employer's contention that ALJ Sorg-Graves improperly concluded that Rivera was on FMLA leave during the eligibility period. Namely the Employer's Exceptions No. 1-6, and 8 all involve this contention. I find all of these exceptions and the Employer's arguments in support thereof to be unpersuasive. As ALJ Sorg-Graves correctly pointed out, the burden of proof rests on the party seeking to exclude a challenged individual from voting. *Sweetener Supply Corp.*, 349 NLRB 1122, 1122 (2007), citing *Golden Fan Inn*, 281 NLRB 226, 230 n.24 (1986). It is the party seeking to establish the voter's ineligibility that bears the burden of proof, even if the Board Agent conducting the election and/or count initially challenged the voter's ballot. *Id.*, citing *Arbors at New Castle*, 347 NLRB 544, 545-546 (2006). Here, although it was the Board Agent who initially challenged Rivera's ballot due to her name not being on the voter list, it was the Employer that took it upon itself to take up this challenge. Thus, it was the Employer's obligation to disprove the eligibility of Rivera to vote in the October election.

The Employer goes to great lengths to nitpick each and every item of evidence presented by the Petitioner and Rivera in support of the notion that the Employer granted Rivera FMLA leave while she cared for her children and sought childcare arrangements due to the pandemic. Ironically the Employer's arguments and exceptions in this regard appear to be placing the burden on Petitioner to prove Rivera's eligibility rather than on its own burden to disprove Rivera's eligibility. To put it quite simply, the Employer did not meet its burden to disprove Rivera's eligibility to vote in the election. The Employer who has full access to all of its payroll documents, time and attendance records, policy documents as well as its managers, supervisors, and other Employer representatives to provide testimony, could have easily presented evidence refuting Petitioner's evidence that Rivera was on FMLA leave during the eligibility period, but failed to do so. Thus, the presumption left is that the Petitioner's evidence is unrefuted, and the Employer has failed to meet its burden.

For instance, the Employer initially contends that Rivera's testimony establishes that she was not on FMLA leave at any time during the eligibility period (Exceptions 1-3, 8). The Employer makes a variety of arguments in this regard including that Rivera did not have sufficient hours to qualify for FMLA leave, and that Rivera's lack of childcare would not have qualified her for FMLA leave but yet the Employer, though it had plenty of opportunity to do so, presented no record evidence at the hearing to refute that Rivera was granted leave when childcare became an issue for her.

The Employer also takes issue with ALJ Sorg-Graves' "implicit" findings that Rivera: was granted FMLA because she did not have a babysitter or child care (Exception No. 2), that Rivera's failure to find childcare after June was attributable to the pandemic (Exception No. 3) or that she was on FMLA leave at any time after June (Exception 8). Yet, as ALJ Sorg-Graves concluded, the schedules, which showed Rivera marked as being on FMLA during the month of June, and Rivera's communications with her supervisor, in which she explains she has no one to take care of her daughters and asks that she can have one more month, all evidence that Rivera was granted FMLA leave during the eligibility period with the intent of returning to work. Moreover, the Employer provided no evidence to dispute that Rivera was granted leave.

Further the Employer argues that the employees' schedules placed on the record by the Petitioner¹⁰ do not prove that Rivera was granted FMLA leave during the eligibility period (Exception 6), despite the fact that the June schedule clearly shows that Rivera has been marked as on "FMLA." Again, although the Employer endeavors to call into doubt the authenticity of its own schedules, the Employer did not offer any testimony or documentary evidence to refute their authenticity. The Employer also criticizes the finding that the documentary evidence presented on the record did not establish that Rivera was on FMLA leave as no additional documentation was presented to support that she was on a leave of this nature. Yet once more, the Employer missed the opportunity to disprove that Rivera was on FMLA leave. The Employer had access to all of its records to show what type of leave, if any, that Rivera was on during the eligibility period but did not meet its burden in this regard.

Finally, the Employer calls into question ALJ Sorg-Graves' reliance on the text exchange between Rivera and the Director of Staff Development, Marx Concepcion (herein Concepcion) to establish that Rivera was on FMLA leave (Exceptions No. 4 and 6). This text exchange shows that Rivera explained her childcare situation, asked for another month, and requested to return on June 17. Concepcion responded agreeing to the request and then asking Rivera to come in and complete her extension. The Employer contends that the text exchange is vague, that Rivera did not specifically request FMLA leave, nor did Concepcion grant it. The Employer also avers that the reference to the "extension" in the text exchange is vague and does not clearly indicate that Rivera is asking for an extension of leave. Once again, though the text exchange may in fact be somewhat vague, ALJ Sorg-Graves relied on the record evidence to make her conclusions. The Employer had the opportunity to present Concepcion, or another witness for rebuttal but failed to do so. The Employer did not meet its burden in this regard. For these reasons I reject these arguments and the exceptions filed in support thereof.

In conclusion I find no merit to the Employer's Exceptions No. 1-6, or 8, or its arguments in support of its exceptions. The Employer had the burden as well as the opportunity to disprove the presumption of eligibility of Rivera but failed to meet this burden.

III. CONCLUSION AND ORDER

Based on the above and having carefully reviewed the entire record, ALJ Sorg-Graves' Report and recommendations, and the exceptions filed by the Employer and arguments of the parties, I overrule the challenge to Rivera's ballot and as recommended by ALJ Sorg-Graves and in the absence of exceptions, I am ordering that the ballots of Kim, Mr. Toral, Mrs. Toral, and Rivera be opened and counted, along with the two ballots for which the Petitioner withdrew its challenges as noted in the Order Directing Hearing and Notice of Hearing on Challenged Ballots in this matter. I am also ordering that the ballot of De Ocampo be voided and not be opened or counted.

REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this Decision. The request for

¹⁰ The Petitioner representative testified that the schedules introduced were provided to the Petitioner by employees.

review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **February 19, 2021**. If no request for review is filed, the Decision is final and shall have the same effect as if issued by the Board.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules and Regulations does not permit a request for review to be filed by facsimile transmission. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated at Los Angeles, California this 4th day of February 2021.



William B. Cowen, Regional Director
National Labor Relations Board, Region 21
U.S. Court House, Spring Street
312 North Spring Street, 10th Floor
Los Angeles, CA 90012

ATTACHMENT B

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

**3067 ORANGE AVE, LLC DBA ANAHEIM CREST
NURSING CENTER**

Employer

and

Case 21-RC-264740

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 2015**

Petitioner

Daniel Adlong, Esq.

for the Employer

Manuel Boigues, Esq.

for the Petitioner

Stephen Simmons, Esq.

for the Regional Director.

REPORT AND RECOMMENDATIONS ON CHALLENGES

INTRODUCTION AND PROCEDURAL HISTORY

KIMBERLY SORG-GRAVES, ADMINISTRATIVE LAW JUDGE. Pursuant to a representation petition filed on August 14, 2020,¹ and a September 24 Decision and Direction of Election (DDE)² issued in this matter, Region 21 of the National Labor Relations Board (Board) conducted a mail-ballot election in October to determine whether a unit of employees working for 3067 Orange Ave, LLC dba Anaheim Crest Nursing Center (Employer) wanted to be represented for the purposes of collective bargaining by the Service Employees International Union, Local 2015 (Petitioner). (Bd. Exh. 1(a); see also the DDE.)³

The Employer operates a skilled nursing home in Anaheim, California (Anaheim facility). The parties stipulated and the Regional Director found in the DDE that the following employees at the Anaheim facility constitutes an appropriate bargaining unit (the Unit):

Included: All full-time, regular part-time, and on-call CNAs, RNAs, Cooks, Dietary Aides, Janitors, Housekeeping employees, Laundry employees, and Activity employees employed by the Employer at its facility located at 3067 West Orange Avenue, Anaheim, California.

¹ All dates refer to 2020, unless otherwise stated.

² I take judicial notice of the Decision and Direction of Election issued in this case by the Regional Director of Regional 21 on September 24, 2020.

³ Abbreviations in this report are as follows: “Tr.” for transcript; “Bd. Exh.” for Board’s Exhibits; “E Exh.” for Employer’s Exhibits; “P Exh.” For Petitioner’s Exhibits; “Rej. P Exh.” for Rejected Petitioner’s Exhibits.

Excluded: All other employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

Pursuant to the DDE, those eligible to vote in the election had to be employed in a unit position during the payroll period ending September 15. The DDE also states that:

Eligible to vote are those employees in the unit who were employed during the **payroll period ending September 15, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. (emphasis in the original)

The parties stipulated that **also eligible** to vote in the election are employees in the unit described above who have worked an average of 4 hours or more per week during the 13 weeks immediately preceding the eligibility date for the election. (emphasis added)

The ballots were mailed on October 2 and were required to be returned to Region 21's office no later than October 27. The Region conducted a count and prepared a tally of ballots on October 27, reflecting that 27 votes were cast for and 25 votes were cast against the Petitioner and 7 ballots were challenged. (Bd. Exh. 1(a).) Two of the challenges were later withdrawn by the Petitioner. Id. On November 24, the Regional Director for Region 21 issued an Order Directing Hearing and Notice of Hearing on Challenged Ballots to determine whether each of the remaining 5 challenged ballots, a sufficient number of ballots to affect the outcome of the election, should be opened and counted.⁴

The case was assigned to me, through the Division of Judges, to conduct the hearing and issue a report and recommendations concerning the challenged ballots. I held the hearing on December 1, via videoconference, due to the continuing compelling circumstances caused by the COVID-9 pandemic. All parties were represented by counsel and were afforded a full opportunity to be heard, to call and examine witnesses, to introduce evidence, and to file briefs by no later than December 7. The Employer and the Petitioner submitted post-hearing briefs summarizing their positions on the issues, which I have carefully considered.

BURDEN OF PROOF IN CHALLENGES TO VOTER ELIGIBILITY

The burden of proof rests on the party seeking to exclude a challenged individual from voting. *Sweetener Supply Corp.*, 349 NLRB 1122, 1122 (2007), citing *Golden Fan Inn*, 281 NLRB 226, 230 n.24 (1986). It is the party seeking to establish the voter's ineligibility that bears the burden of proof, even if the Board Agent conducting the election and/or count initially challenged the voter's ballot. *Id.*, citing *Arbors at New Castle*, 347 NLRB 544, 545-546 (2006). Thus, the Petitioner has the burden to establish that the challenged ballot of Moun Suk Kim

⁴ The two ballots, for which the Petitioner has withdrawn its challenges, if opened and counted, are not sufficient in number to affect the outcome of the election. If one or more of the five remaining challenged ballots are directed to be opened and counted, then there will be a sufficient number of ballots to affect the outcome of the election, requiring them to be opened and counted.

should be sustained. The Employer has the burden to establish that the challenged ballots of Adolfo Toral, Maria Toral, Yesica Rivera, and Samantha De Ocampo should be sustained.

THE PETITIONER’S CHALLENGE TO THE BALLOT OF
MOUNG SUK KIM

The Parties’ Contentions

The Petitioner contends that MOUNG SUK KIM (Kim) was no longer employed on the eligibility date, and therefore, the ballot cast by Kim should not be opened and counted. The Employer contends that Kim’s ballot should be opened and counted because she is eligible as a full-time employee in the unit who has been on medical leave.

The Relevant Facts

Kim was hired in 2004 and worked for the Employer as a full-time dietary staff employee. (E Exh. 1.) Kim was listed as “sick” on the August dietary department’s schedule but was not listed on the September dietary department schedule. (P Exh. 1 and 2.)

Jesse Brizuela processes payroll for the Employer. (Tr. 24.) Brizuela testified that Kim has been off work since June 30 due to injuries suffered in an accident. Brizuela noticed that Kim had not been on the schedule and spoke to her supervisor about her status. (Tr. 39.) After his inquiry, he received a medical excuse letter from her physician. (Tr. 28.) Brizuela completed a personnel action form indicating that she was granted medical leave effective August 16. (Tr. 38; E Exh. 1 and 2.) Kim’s physician estimated that she would be able to return to work on November 30. The Petitioner notes that under FMLA Kim is limited to 12 weeks of leave, and that the leave would have been exhausted by the end of September, well before Kim was expected to be able to return to work. (Tr. 37.) The record is silent as to whether Kim had returned to work by the date of the hearing. The record contains no evidence to dispute Brizuela’s testimony that Kim was neither terminated nor resigned. (Tr. 25, 28.)

Analysis

The well-established Board standard “presumes an employee on sick or disability leave to be eligible to vote absent an affirmative showing that the employee has resigned or been discharged.” *Home Care Network, Inc.*, 347 NLRB 859 (2006), citing *Red Arrow Freight Lines*, 278 NLRB 965 (1986). See also *Pepsi-Cola Co.*, 315 NLRB 1322 (1995).⁵ Here, the Petitioner has failed to meet its burden of affirmatively showing that Kim has resigned or has been discharged. The Petitioner points to the fact that the FMLA only provides for 12 weeks of leave and that the paperwork for the leave was not completed until after the petition in this matter was filed. The Petitioner also points out that Kim’s name was removed from the monthly schedule unlike other employees whose names remained on the schedule but were listed as being on leave.

⁵ In this line of cases, there is some contention that the test should require that the employee have a the “reasonable expectancy of return.” Based upon the physician’s expectation that Kim would be able to return to work on November 30, and the employer’s apparent willingness to grant her, and as discussed below, other employees leave, there is a reasonable expectation that Kim will return to work.

First, I note that the voter eligibility date was within the 12 weeks from when Kim first went on leave. Second, nothing prevents an employer from affording employees a longer medical leave or to grant a medical leave even if the FMLA requirements are not actually met. The medical note from Kim's doctor evidences her expectation of returning to work, and the Employer's completion of the personnel action form evidences the Employer's willingness to return her to work. Based upon the available evidence, I find that the Petitioner failed to show that Kim has resigned or been discharged.

Accordingly, I recommend that the ballot of Moun Suk Kim be opened and counted.

THE EMPLOYER'S CHALLENGES TO THE BALLOTS OF ADOLFO TORAL, MARIA TORAL, AND YESICA RIVERA

The Parties' Contentions

The Employer contends that the ballots cast by Adolfo Toral (Mr. Toral), Maria Toral (Ms. Toral), and Yesica Rivera⁶ (Rivera) should not be opened and counted, regardless if they are considered part-time or on-call employees, because they did not work an average of 4 hours or more per week during the 13 weeks immediately preceding the eligibility date for the election, which was June 16 to September 15 (eligibility period). In support of this contention, the Employer relies upon the formula set forth in *Davison-Paxon Co.*, 185 NLRB 21, 23-24 (1970) to assert that an employee must average at least 4 hours of unit work per week during the last quarter (13 weeks) immediately prior to the election eligibility date to be eligible to vote. See also *Woodward Detroit CVS, LLC*, 355 NLRB 1115 (2010). The Employer also points to similar, stipulated language in the DDE noted above.⁷ The Employer makes no argument that these employees do not perform unit work or should be found ineligible for any reason other than the number of hours worked within the eligibility period.

The Petitioner contends that each of these employees is eligible to vote as a regular part-time employee in the unit and that any failure to meet a minimum of 4 hours per week was due to illness or other excusable reasons. The Petitioner contends that the test to determine whether an employee is a regular part-time employee is more nuanced than a straight average of hours based upon the *Davison-Paxon* formula and that the test to determine whether one is a regular part-time employee takes into consideration such factors as regularity and continuity of employment, tenure of employment, similarity of work duties, and similarity of wages, benefits, and other working conditions. See *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 819-820 (2003) (citing to *Muncie Newspapers, Inc.*, 246 NLRB 1088, 1089 (1979)).

⁶ Rivera's full name listed on employer records is Yesica B. Rivera Martinez and she was also referred to as Jessica Rivera in some documents. (E Exh. 5; Bd. Exh. 1(a).)

⁷ I note that the stipulated language in the DDE "that also eligible to vote in the election are employees. ..." is inclusive language. Therefore, I give no merit to the contention by the Employer that this language somehow excludes or creates a higher bar for regular part-time or on-call employees than the standards set by Board precedent.

The Relevant Facts

Mr. Toral and Ms. Toral are married and have worked for the Employer for most of the preceding five years. (Tr. 135-137.) They work as certified nurse aides, referred to as CNAs. (Tr. 135.) About June 2019, they switched from full-time to part-time work and completed paperwork provided by one of the Employer's directors of staff development, noting their part-time status and ending their Employer sponsored health insurance eligibility.⁸ (Tr. 137, 138-139.) They switched to part-time because they started a full-time position for another employer and moved closer to that job. They continued to work for the Employer one day per week. Because they live 55 miles from the Anaheim facility, they commute together and work the same shift. (Tr. 137.) Towards the end of each month after reviewing their schedules for the next month, Mr. Toral texts one of the Employer's directors of staff development the dates that they are available for the next month, usually consisting of one day each week. Mr. Toral testified that they have always been scheduled for the dates they offer. (Tr. 141-144; P Exhs. 7 and 10.) The Employer's monthly schedules list the Torals as part-time CNAs. (P Exh. 7.)

The Employer presented evidence that during the eligibility period Mr. Toral and Ms. Toral each worked less than an average of 4 hours per week. (Tr. 29-33; E Exhs. 3 and 4.) Mr. Toral's timecard records show that he worked approximately 7.5 hours on each of the 6 days that he worked during the eligibility period, totaling 44.78 hours, and that he was marked as sick for 3 shifts. Ms. Toral's accumulated timecard records show that she also worked approximately 7.5 hours on the same 6 days for a total of 44.87 hours and was recorded as sick for the same 3 shifts. (E Exhs. 3 and 4.)

The Torals both became ill with COVID-19 on June 16 and did not return to work for the Employer until August. During the first 2 pay periods they were off, they were each paid for a total of 22.5 hours, or 7.5 hours for each the 3 shifts that they were scheduled to work, pursuant to the Families First Coronavirus Response Act (FFCRA). (Tr. 48-49; P Exhs. 5, 6 and 15.) The FFCRA provides for two weeks of paid sick leave, but the Torals were ill until the beginning of July. (Tr. 148.) From July 5 through July 24 they were listed on the Employer's monthly nursing center schedule as on leave under the Family Medical Leave Act (FMLA). (P Exh. 3.) In each of August and September, they were each scheduled and worked 4 shifts of approximately 7.5 hours, as Mr. Toral testified has been their practice for the last two years, for an average of 6.9 hours per week.⁹ (P Exh. 3; E Exhs. 3 and 4.)

The Employer also provided accumulated timecard records showing that Rivera did not work an average of 4 hours per week during the eligibility period. During the eligibility period, she was paid for time worked on 7 days, totaling 34.60 hours. (E Exh. 5.) Rivera worked for the Employer as a full-time CNA for 8 years before transitioning to part-time work two years ago. (Tr. 172-173.) Her regular part-time work schedule was Wednesday, Thursday, and Friday each

⁸ The Employer's personnel action form notes whether an employee is full-time, part-time, temporary, or on-call, referred to as PRN on the form. The Employer presented no evidence that the Torals and Rivera were not classified as part-time employees on personnel records as they were on the monthly schedules. (Tr. 36; E Exh. 1.)

⁹ There are 61 days in August and September divided by 7 days in a week equals 8.7 weeks. The Torals worked approximately 60 hours during August and September, 7.5 times 8 shifts. Therefore, they averaged 6.9 hours per week during this time period, which I find the credible evidence supports is representative of their regular work schedule absent illness.

week until April when the pandemic caused childcare issues, requiring her to stay home with her young children. (Tr. 173.) The record indicates that Rivera was granted FMLA leave. Rivera communicated with her director of staff development Marx Concepcion via text message in May. Concepcion advised her that he would complete an extension form for her and directs her to sign and fax it back. (P Exh. 9.) The June schedule lists her as being on FMLA leave. (P Exh. 8.) The Employer presented no evidence to contradict Rivera's testimony that she regularly worked three days per week prior to April and had been granted leave. When she offered to return to work in June, she was told that she had to complete COVID-19 testing first, which delayed her return. (Tr. 177; P Exh. 9.)

Rivera's time records indicate the she was paid for completing the COVID-19 testing at the end of June, worked 4.15 hours on July 2, and then started working every Thursday on July 23, then less frequently in August because of childcare issues. (Tr. 173-174; E Exh. 5.) Sometime in September or October, she returned to working every Thursday, and then started working two days per week in November. (P Exh. 4; Tr. 174-175.)

Like the Torals, Rivera informed her director of staff development of her availability for the next month and was scheduled for the days that she was available. (Tr. 179.) The Torals and Rivera are listed on the monthly schedules as part-time employees and are assigned dates of work. The one schedule that lists an employee as "on-call" does not indicate any pre-assigned dates of work. (P Exh. 4.)

Analysis

The test to determine whether one is a regular part-time employee versus a casual employee takes into consideration such factors as regularity and continuity of employment, tenure of employment, similarity of work duties, and similarity of wages, benefits, and other working conditions. See *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 819-820 (2003) (citing to *Muncie Newspapers, Inc.*, 246 NLRB 1088, 1089 (1979)). The inquiry examines whether the employee performs unit work with sufficient regularity to demonstrate a community of interest with employees in the bargaining unit. See *Pat's Blue Ribbons & Trophies*, 286 NLRB 918 (1987). The formula the Board typically uses for determining whether an existing employee works with sufficient regularity to qualify as a regular part-time employee is set forth in *Davison-Paxon Co.*, 185 NLRB 21 (1970). The *Davison-Paxon* standard requires that the employee must average at least 4 hours of unit work per week during the 13 weeks immediately prior to the election eligibility date. *Id.* at 23-24. See also *Woodward Detroit CVS, LLC*, 355 NLRB 1115 (2010).¹⁰

In considering whether an employee is a regular part-time employee, the fact that an employee is employed elsewhere, can turn down work, or is not pre-scheduled for shifts is not determinative. *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 820 (2003); *Tri-State Transportation Co., Inc.*, 289 NLRB 356, 357 (1988) (Board held that an employee's ability to

¹⁰ The Board has recognized that in some industries, such as the entertainment industry, "special circumstances" may warrant deviating from the *Davison-Paxon* formula. See *DIC Entertainment, L.P.*, 328 NLRB 660, 660 (1999), *enfd.* 238 F.3d 434 (D.C. Cir. 2001) (quoting *Trump Taj Mahal Casino Resort*, 306 NLRB 294, 296 (1992)). Compare *Kansas City Repertory Theatre, Inc.*, 356 NLRB 147 (2010), and *Julliard School*, 208 NLRB 153 (1978) with *Columbus Symphony Orchestra, Inc.*, 350 NLRB 523, 525 (2007), and *Steppenwolf Theatre Co.*, 342 NLRB 69, 71 (2004).

decline work and be employed elsewhere is not determinative of employment status). See also *Mercury Distribution Carriers, Inc.*, 312 NLRB 840 (1993) (the fact that a part-time employee does not call in every day to find out if work is available does not require his exclusion from the unit).

The Torals are long-term employees for the Employer. There is no dispute that they perform unit work, receive similar wages, and have other similar working conditions as unit employees for the work they perform. Documentary evidence and Mr. Toral's unrefuted, credible testimony establishes that the Torals regularly worked 4 shifts of approximately 7.5 hours per month before and after being ill with COVID-19 during the eligibility period. Absent the period during which they were ill, they regularly average more than 4 hours of work per week.

As asserted by the Employer, the Torals did not average 4 hours of actual work per week during the eligibility period. If the three shifts or 22.5 hours for which they received sick leave pay is included in the calculation, they averaged 5.18 hours per week during the eligibility period. As discussed above, employees on sick leave are presumed to be eligible to vote "absent an affirmative showing that the employee has resigned or been discharged." *Home Care Network, Inc.*, 347 NLRB 859 (2006), citing *Red Arrow Freight Lines*, 278 NLRB 965 (1986). The Employer presented no evidence that the Torals were discharged or resigned. To the contrary, the Employer's monthly schedule listed them as part-time CNAs who were absent due to FMLA, indicating that they were expected to return to their regular part-time work, as they did. Therefore, I find that the Employer has failed to prove the Torals are not regular part-time employees who were eligible to vote in the election.

Similarly, Rivera is a long-term employee of the Employer. She initially performed full-time unit work but switched to regular part-time work a couple years ago. The Employer failed to refute that she regularly worked three days per week until April when she took leave to care for her children as a result of the COVID-19 pandemic. As the Employer asserts, records reflect that she did not work an average of 4 hours per week during the eligibility period. Yet, schedules and her communications with her supervisor evidence that she was granted FMLA leave during the eligibility period with the intent of returning to work. The Employer provided no evidence to dispute that she was granted leave. While the *Red Arrow* line of cases discuss employees on sick or disability leave, under the current circumstances caused by the pandemic, I find it appropriate to extend the presumption of eligibility to those who have been granted leave for childcare reasons. I find that the Employer has failed to rebut the presumption that otherwise eligible employees who are on leave are eligible to vote, because the record contains no evidence that Rivera resigned or was discharged.

Accordingly, I recommend that the ballots of Adolfo Toral, Maria Toral, and Yesica Rivera be opened and counted.

**THE EMPLOYER’S CHALLENGE TO THE BALLOT OF
SAMANTHA DE OCAMPO**

The Parties’ Contentions

5 The Employer contends that the challenge to Samantha De Ocampo’s (Ocampo) ballot should be sustained because her mother filled out the ballot, signed the envelope, and mailed it to the Regional office without proper authorization. The Petitioner contends that Ocampo authorized her mother to complete her ballot, and therefore, it should be opened and counted.

The Relevant Facts

I note that Ocampo’s testimony was often contradictory on its face. I set forth here the evidence that I find credible based upon her testimony and documentary evidence.

15 When the ballots were mailed out, Ocampo was staying at a hotel close to the Anaheim facility. (Tr. 56.) Her ballot was mailed to her mother’s address. Ocampo did not retrieve her ballot from her mother’s home before she left on vacation. (Tr. 56-57.) Ocampo spoke to her mother and told her mother to complete the ballot, sign Ocampo’s name on the envelope, and return it for her, which her mother did. (Tr. 63.)

20 At some point thereafter Ocampo spoke with her mother about the ballot. Ocampo testified that her mother told her that representatives of the Petitioner visited her home twice soliciting a vote in favor of unionization. (Tr. 71.) Ocampo’s mother either told her that she could not remember how she completed the ballot or that she completed the ballot in favor of the Petitioner. (Tr. 57; E Exh. 8.) Ocampo requested a second ballot from Region 21. (Tr. 57.) An
25 agent from Region 21 took an affidavit in which Ocampo stated that her mother told her that she could not recall how she completed the ballot. (Tr. 64.) A second ballot kit was issued to Ocampo. (Tr. 57.) Ocampo gave an affidavit to an attorney that represents the Employer stating that her mother told her that she marked the ballot in favor of the Petitioner. (E Exh. 8.) Employer representatives drove Ocampo to the offices of Region 21 to drop off her second
30 ballot, but it was after the cutoff for returning ballots and was rejected. (Tr. 69.)

35 While Ocampo contradicted much of her own testimony, the one statement that she reiterated consistently was that she was unsure whether her mother complied with her wishes in completing the ballot. (Tr. 62-63, 64.) Based upon her accounts of what her mother told her and her actions in response to that information, I find that Ocampo doubted that her mother marked the ballot as Ocampo wished.

Analysis

40 To prevent fraud, coercion, or other situations that call into question the validity of a ballot in the mail-ballot process, the Board has developed detailed instructions for the proper conduct of mail-ballot elections. See Sec. 11336 of the Board’s Casehandling Manual (Part Two) Representation Proceedings. Pursuant to these instructions the mail ballot kit sent to each eligible voter includes Form NLRB-4175 Instructions to Eligible Employees Voting by United

States Mail, which directs the voter, among other procedures, to sign the envelope in which the ballot is returned. The Board has strictly enforced these provisions, including by voiding a ballot where the eligible voter printed instead of signed his name on the envelope. See *Thompson Roofing, Inc.*, 291 NLRB 742 (1988). See also Sec. 11336.5(c) of the Board's Casehandling Manual (Part Two) Representation Proceedings.

Here, the Petitioner asserts that Ocampo's ballot, which she authorized her mother to complete, should not be voided/withdrawn to protect against undue influence. The Board has long held that a voter may not withdraw their ballot once it has been cast to prevent coercion that may affect the outcome of the election, but those cases, unlike here, involved ballots correctly completed and submitted by eligible voters. *T&G Manufacturing*, 173 NLRB 1503, 1504 (1969); *Great Eastern Color Lithographic Corp.*, 131 NLRB 1139, 1140-1141 (1961).

While no Board precedent directly on point has come to my attention, a similar situation arose in *Space Mark, Inc.*, 325 NLRB 1140, 1142 (1998). In *Space Mark*, an eligible voter's wife, who had a general power of attorney to act on the voter's behalf due to his frequent out-of-town work, completed the ballot, signed the envelope, and returned it at his request. *Id.* at 1141-1142. In the meantime, he requested and received a second ballot kit, marked that ballot, signed the envelope, and timely returned it. *Id.* The Board typically finds that the first ballot received from an eligible voter is the proper ballot to open and count to avoid undue influence being placed on voters, but it did not apply that precedent in *Space Mark*. Instead, the Board noted that the parties voided the first ballot cast by his wife and held that the second ballot cast by the voter be opened and counted. *Id.* The Board did not conclude that the first ballot should have been counted despite its procedural defects.

The circumstances surrounding Ocampo's ballot highlight the need for the Board's procedures. If someone else completes a ballot for an eligible voter, even at the voter's request, it is impossible to know if the person completing the ballot complied with the voter's wishes, as is the case with the ballot cast by Ocampo's mother. The Petitioner has not pointed to any Board precedent allowing another person to complete a ballot for the eligible voter. I find no support for such a departure from Board procedures, which the Board has so strictly enforce that it voided a ballot because the eligible voter printed his name on the return envelope instead of signing it. *Thompson Roofing*, above.

While the many interactions Ocampo had concerning her ballot may raise concerns about possible coercion, that does not change the fact that the ballot completed by her mother does not comply with mail-ballot procedures. Under the circumstances of this case, I find that the ballot at issue, which was completed by Ocampo's mother, fails to meet the requirements for a validly cast ballot, and therefore, should be voided.

Accordingly, I recommend that the ballot of Samantha De Ocampo be found void and not opened or counted.

CONCLUSION

I recommend that the ballots of Moun Suk Kim, Adolfo Toral, Maria Toral, and Yesica Rivera be opened and counted, along with the two ballots for which the Petitioner withdrew its

challenges as noted in the Order Directing Hearing and Notice of Hearing on Challenged Ballots in this matter. I also recommend that the ballot of Samantha De Ocampo be voided and not be opened or counted.

APPEAL PROCEDURE

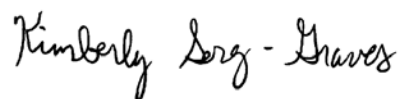
Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 21 by **December 29, 2020**. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the exceptions should be addressed to the Regional Director, National Labor Relations Board, 312 North Spring Street, 10th Floor, Los Angeles, California 90012 and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden.

Pursuant to Sections 102.111–102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business at 5:00 p.m. Pacific Time on the due date. If E-Filed, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Pacific Time on the due date.

Within 5 business days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated, Washington, D.C., December 14, 2020.



Kimberly R. Sorg-Graves
Administrative Law Judge

ATTACHMENT C

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 21

In the Matter of:

3067 Orange Ave, LLC d/b/a Case No. 21-RC-264740
Anaheim Crest Nursing Center,

Employer,

and

Service Employees International
Union, Local 2015,

Petitioner.

Place: Los Angeles, California (Via Zoom Videoconference)

Dates: December 1, 2020

Pages: 1 through 185

Volume: 1

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(602) 263-0885

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 21

In the Matter of:

3067 ORANGE AVE, LLC D/B/A Case No. 21-RC-264740
ANAHEIM CREST NURSING CENTER,

Employer,

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 2015,

Petitioner.

The above-entitled matter came on for hearing, pursuant to
notice, via Zoom videoconference, before KIMBERLY SORG-GRAVES,
Administrative Law Judge, at the National Labor Relations
Board, Region 21, 312 N. Spring Street, Suite 10150, Los
Angeles, California, 90012, on Tuesday, December 1, 2020, 9:22
a.m.

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A P P E A R A N C E S

On behalf of the Employer:

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OGLETREE, DEAKINS, NASH, SMOACK & STEWART, P.C.

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EXHIBIT

Employer:

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Petitioner:

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WITNESS

Jesse Brizuela

Samantha De Ocampo

Ignacio Cortes

Adolfo Toral

Yesica Rivera

DIRECT

CROSS

REDIRECT

RECROSS

VOIR DIRE

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Board:

B-1(a) through B-1(c)

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<p style="text-align: right;">Page 30</p> <p>1 Q Okay. So then if you go to the next one, it says date, 2 and then if you go underneath, there's a bunch of dates and 3 some other numbers; can you tell us what that is showing us? 4 A Those -- those are the dates they worked. 5 Q Okay. Okay. And then when you go over, and it -- at the 6 top it says in, and then there has numbers or times underneath 7 that; can you tell us what that column's telling us? 8 A That -- yeah, those are the times they clocked in from 9 either the -- for the day or for lunch. 10 Q Okay. And then when you go over and it says out, what is 11 that showing us? 12 A It shows their clock out for lunch, or for clock out for 13 the day. 14 Q Okay. Now when you go over here, it says reg, and then 15 you go down; what is that showing you? 16 A That shows the regular hours they worked, the total 17 regular hours they worked per shift. 18 Q Okay. And -- okay, and then when you go total hours on 19 the far right; what is that number showing us? 20 A That -- their total hours they worked, that would be 21 including the OT and double time; however, this employee 22 doesn't have any. 23 Q Okay. So then if we go left to right, is that to say, Ms. 24 Toral -- Mr. Toral on the first -- on the first one, it looks 25 like he worked Tuesday, June 16, 2020; he clocked in at 3 p.m.,</p>	<p style="text-align: right;">Page 32</p> <p>1 A At -- at the top where it says time card report, right 2 below it, they'll show the dates, time card report for 6/15 to 3 9/15/2020. 4 Q Okay. Now, when we go down here, through this -- I'm 5 turning your attention now to Respondent's Exhibit 4. Who is 6 this document for? 7 A This is for Ms. Maria Toral. 8 Q And can you tell us the time period -- well, let me ask 9 you this. How from this document can you tell that it's for 10 Ms. Toral? 11 A Again, it states there underneath the day and dates, 12 employee, her employee number, and then her name. 13 Q Okay. And then what is the time period at issue on this 14 document? 15 A Right below the time card report, it states 6/15 to 16 9/15/2020. 17 Q Okay. And do we read this document exactly the way you 18 explained you read the Employer's Exhibit 3? 19 A That is correct. 20 Q So on this document, when you go down to the bottom right- 21 hand corner, it says total hours; how many total hours did Ms. 22 Toral work during this time period? 23 A 44.87. 24 Q Okay. How are you specifically familiar with this 25 document?</p>
<p style="text-align: right;">Page 31</p> <p>1 clocked out at 7:32, clocked back in at 8:04, and then clocked 2 out at 11 -- at 10:59? 3 A That's correct. 4 Q Okay. And then -- so he worked a total of like, 7.5 hours 5 or something like that? 6 A That's correct. 7 Q Okay. And then -- so as we go down each row, all that 8 information signifies the same thing? 9 A That's correct. 10 Q Okay. And then to the extent we have something here, 11 those -- that is showing time that that individual -- did the 12 individual work that time? 13 A No. 14 Q Okay. When you go to the bottom right-hand corner, it 15 says total hours, and there's a number there; what is that 16 number? 17 A The total hours they worked for this -- for this time 18 card. 19 Q Okay. How are you familiar with this specific report? 20 A I -- I process this report. I printed it out. 21 Q Okay. How do we know that? 22 A It states there at the very bottom, J.R. Brizuela. 23 Q Okay. And I might have asked you this, but I just want to 24 make sure, can you tell us where we can identify on this report 25 the time period in question?</p>	<p style="text-align: right;">Page 33</p> <p>1 A Again, I printed it out. 2 Q Okay, and how do we know this? 3 A It states it at the very bottom. 4 Q Okay. So I'm going to turn your attention to Respondent's 5 Exhibit 5. Can you tell me what this document is? 6 A A time card for Ms. Yesica Martinez. 7 Q Okay. And how do we know that? 8 A It states there, next -- underneath the day and date, 9 employee, or employee number, and her name. 10 Q Is it possible that this employee goes by Yesica Rivera? 11 A Yes. 12 Q Okay. 13 A Yesica Rivera. 14 Q And then what is the time period in question for this 15 report? 16 A Again, 6/15 to 9/15/2020. 17 Q Okay. And we can tell that from what? 18 A Right underneath the time card report, it states right 19 there, at the very top. 20 Q And how can we -- and then -- so is it fair to say that we 21 read this report exactly the way you explained Employer's 22 Exhibit 3 and how you read that? 23 A That's correct. 24 Q Okay. And so for Ms. Rivera, how many total hours did she 25 work?</p>

<p style="text-align: right;">Page 34</p> <p>1 A 34.6.</p> <p>2 Q And how do we see that?</p> <p>3 A It states it at the very -- at the middle right,</p> <p>4 underneath total hours, at the very bottom.</p> <p>5 Q Okay. And how are you familiar with this report?</p> <p>6 A Again, I printed it out.</p> <p>7 Q Okay.</p> <p>8 MR. ADLONG: I'm going to move for admission of Employer's</p> <p>9 Exhibit 3, 4, and 5.</p> <p>10 MR. BOIGUES: No objection.</p> <p>11 JUDGE SORG-GRAVES: Employer's Exhibits 3, 4, and 5 are</p> <p>12 admitted.</p> <p>13 (Employer Exhibit Numbers 3, 4 and 5 Received into Evidence)</p> <p>14 Q BY MR. ADLONG: So a couple of questions about Employer's</p> <p>15 Exhibit 3, 4, and 5, Mr. Brizuela. If an employee worked any</p> <p>16 hours during the time period on these reports, which is June</p> <p>17 15, 2020 through September 15, 2020; would they show up on this</p> <p>18 report?</p> <p>19 A That is correct.</p> <p>20 Q Okay.</p> <p>21 MR. ADLONG: No further questions for this witness.</p> <p>22 JUDGE SORG-GRAVES: Okay. Mr. Boigues, do you have any</p> <p>23 follow-up questions for this witness?</p> <p>24 MR. BOIGUES: I do, Your Honor. As soon as -- as soon as</p> <p>25 Mr. Adlong is able to take down his screen.</p>	<p style="text-align: right;">Page 36</p> <p>1 form -- is changed to on-call, would this form also be used to</p> <p>2 document that change?</p> <p>3 A That is correct.</p> <p>4 Q I'm going to pull up the form again, make sure that -- let</p> <p>5 me look at it. We're looking at Employer Exhibit -- I'm going</p> <p>6 to share my screen in a second -- Employer Number 1. This is</p> <p>7 the form that you were just looking at. On the form, the</p> <p>8 employer has a personnel action form for any employee and that</p> <p>9 employee is an on-call employee, where on this form would we</p> <p>10 see the code showing on-call?</p> <p>11 A It would be PRN.</p> <p>12 Q Excuse me? Say that again?</p> <p>13 A Under -- under -- excuse me. Under the job code, you'll</p> <p>14 see the full-time, part-time, PRN. It would be notified as</p> <p>15 PRN.</p> <p>16 Q P-R-N. Is that the -- the initials you're using?</p> <p>17 A Yes, that's correct.</p> <p>18 Q You know what PRN stands for?</p> <p>19 A I do not.</p> <p>20 Q But your understanding as the A/P payroll person at the</p> <p>21 facility is that PRN is the same as on-call; did I understand</p> <p>22 that correctly?</p> <p>23 A That's correct.</p> <p>24 Q And I am looking at Employer Exhibit Number 1. I'm</p> <p>25 looking under Section B, where it says employment information,</p>
<p style="text-align: right;">Page 35</p> <p>1 MR. ADLONG: That better?</p> <p>2 CROSS-EXAMINATION</p> <p>3 Q BY MR. BOIGUES: Mr. Brizuela, how are you today?</p> <p>4 A I'm all right, yourself?</p> <p>5 Q I'm doing well. I'm Manny Boigues. I'm one of the</p> <p>6 Union's attorneys. I have some questions regarding your</p> <p>7 testimony, okay?</p> <p>8 A Yes, sir.</p> <p>9 Q Mr. Brizuela, how long have you been employed in the</p> <p>10 position as the A/P payroll?</p> <p>11 A Since February of this year.</p> <p>12 Q Mr. Brizuela, with respect to the -- the PAF form that you</p> <p>13 gave testimony about earlier regarding Ms. Kim, you testified</p> <p>14 that that form is used for a leave of absence; is that correct?</p> <p>15 A That's correct.</p> <p>16 Q You also said that it is used to process status changes.</p> <p>17 A That's --</p> <p>18 Q What did you mean by status changes?</p> <p>19 A The employee status changes from full-time, part-time,</p> <p>20 leave of absence, anything of that sort.</p> <p>21 Q I see. So if an employee switches from full-time</p> <p>22 employment to part-time employment, some form of this nature</p> <p>23 will be -- be used to document that; is that correct?</p> <p>24 A That's correct.</p> <p>25 Q If an employee -- employee's status is on-call, would this</p>	<p style="text-align: right;">Page 37</p> <p>1 and I see the initials there PRN under the job code; is that</p> <p>2 where you are referring to?</p> <p>3 A Yes.</p> <p>4 Q Okay. Thank you, Mr. Brizuela. The PT box that we just</p> <p>5 saw next to PRN; would that be the box that would be checked to</p> <p>6 identify that the individual was a part-time employee?</p> <p>7 A That is correct.</p> <p>8 Q Mr. Brizuela, do you agree with me that FMLA leave is 12</p> <p>9 weeks protected leave?</p> <p>10 MR. ADLONG: Objection. Relevance. Calls for a legal</p> <p>11 conclusion.</p> <p>12 MR. BOIGUES: I'm not asking for a legal conclusion, Your</p> <p>13 Honor.</p> <p>14 JUDGE SORG-GRAVES: I'm going to overrule.</p> <p>15 MR. BOIGUES: Thank you.</p> <p>16 Q BY MR. BOIGUES: Mr. Brizuela, do you agree with me that</p> <p>17 an FMLA leave is a 12-week leave?</p> <p>18 A That's correct.</p> <p>19 Q Mr. Brizuela, you testified that you created Employer</p> <p>20 Exhibit Number 1, the PAF form for Ms. Kim; when were you asked</p> <p>21 to create that?</p> <p>22 A I was asked -- once I found out the employee was injured</p> <p>23 and out, I -- I created the form as soon as possible.</p> <p>24 Q Was that in August?</p> <p>25 A I'm not quite -- I don't quite remember.</p>

<p style="text-align: right;">Page 94</p> <p>1 have the right to challenge a ballot or opposed another party's 2 challenge of a ballot. So that's not really at issue. The 3 ballots are challenged. 4 What's at issue is what are the facts involving these 5 individual employees. And if Ms. Rivera is available to 6 testify, then obviously she has the best evidence absent -- I 7 don't know if Mr. Cortes has documents. I'm more than glad to 8 look at documents. But to listen to hearsay that -- that she's 9 going to be able to verify in direct evidence later, I just 10 don't know that that's necessary. 11 Now, if -- if there's something -- I'm trying to think if 12 there would be any time that it would be appropriate for Mr. 13 Cortes to put in hearsay evidence if you're going to tell me 14 you don't have some sort of witness to back that evidence up 15 later. I just don't know that there's going to be a 16 credibility issue as to how long Ms. Rivera has actually worked 17 there. That's something that Mr. Adlong is going to present 18 contrary evidence to what she might state. If that becomes the 19 case, I might revisit this idea. 20 But I guess to the extent that Mr. Cortes has -- had 21 access one way or the other through this procedure to documents 22 like you showed me in Exhibit 2, something that's not hearsay, 23 I'm glad to hear it. But if you have a witness that's going to 24 give me direct testimony, I don't know that it's necessary to 25 hear this now.</p>	<p style="text-align: right;">Page 96</p> <p>1 That's what we are trying to do. If you don't want us to 2 proceed that way, we could wait until later, unless the 3 Employer wants to release Ms. Rivera now so that she could come 4 in and testify about her tenure. But -- 5 JUDGE SORG-GRAVES: Well, okay. There's a couple issues 6 here. It sounds to me that we have a couple choices. If for 7 some reason we happen to be done with the hearing except for 8 Ms. Rivera's testimony, then we'll ask the Employer at that 9 point to -- if she can be released. If not, then we'll take a 10 little break and come back when she's available. So those are 11 our options as far as that's concerned. 12 And I do understand that it's a fact finding mission, and 13 therefore hearsay is more liberally accepted in a post -- pre- 14 election and post-election hearing. But still back to if we 15 have direct evidence, I don't know that the necessary -- 16 there's necessary for us to take a bunch of hearsay evidence on 17 something that's going to be direct. 18 If you want to sort of -- I'm going to give you a little 19 leeway to sort of short change it. You know, put in some 20 information that you want to put in. 21 Mr. Adlong, we aren't in a ULP hearing. There is 22 credibility at issue. But hearsay is allowable. 23 I'm just asking, Mr. Boigues, is -- you know, for time's 24 sake, is there really a reason for this if we have good direct 25 evidence coming later?</p>
<p style="text-align: right;">Page 95</p> <p>1 MR. BOIGUES: Well, I understand, Your Honor. I am trying 2 to make sure that I get the evidence in. The Hearing Officer's 3 Guide says that hearsay can be admissible. The weight that you 4 will give it will depend onto whether it is corroborated later. 5 That's the guideline that the Hearing Officer's Guide gives us. 6 And that is exactly what we are following. We're establishing 7 what the Union's basis for its position is, what the evidence 8 the Union gathered. And we will have corroborating evidence 9 later. That is -- we're just following exactly -- we're giving 10 the -- the whole picture. 11 And I know Mr. Adlong would rather intimidate the witness 12 herself later without having the whole picture presented to you 13 before she has an opportunity to testify. But she's not 14 available until 3:00. The Employer is offering right now 15 additional bonuses so employees could work. She picked up a 16 shift on the date that this was scheduled in a short time 17 period. So she's not available for us right now. 18 I am trying to give the record the Union's investigation, 19 which is the Union's business to investigate these things and 20 to give its position to the Board. That is what we are doing 21 here, which is under the business exception what the Union 22 gathers as part of investigation becomes relevant here. And 23 what weight you give it will depend on whether it's 24 corroborated later, according to the Hearing Officer's guide 25 itself.</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. BOIGUES: Understood, Your Honor. Thank you. 2 Q BY MR. BOIGUES: Ignacio, as part of your investigation 3 into Ms. Rivera's eligibility, did you review any documents? 4 A I did. 5 Q What did you review? 6 A There was the schedules from the morning shift. 7 Q What do you mean for the morning shift? Explain that to 8 the -- to -- to the judge what it is that you mean by the 9 morning shift. 10 A A schedule where they -- a group of people work from 7 11 a.m. to 3 p.m. 12 Q And why were you focusing on the schedules for that shift, 13 the a.m. shift, with respect to Ms. Rivera's eligibility to 14 vote? 15 A Because that's where -- that's where she works. She works 16 in that shift. 17 Q She works in which shift? The a.m. shift? 18 A The a.m. shift. 19 Q How did you know that she worked the a.m. shift? 20 A Because her name it is marked on the schedule. 21 Q Okay. What month of schedules did you look at with 22 respect to Ms. Rivera's eligibility? 23 A June, July, if I recall, August, September. 24 Q I am going to share with you Petitioner Exhibit 8. It's a 25 five-page document. Can you explain for the record what we are</p>

<p style="text-align: right;">Page 106</p> <p>1 Q Who did you obtain this from?</p> <p>2 A From Yesica.</p> <p>3 Q From Yesica Rivera?</p> <p>4 A Yesica Rivera.</p> <p>5 Q And did you get an explanation from Ms. Rivera as to what</p> <p>6 this document -- why she was providing this to you, these --</p> <p>7 A Yes.</p> <p>8 Q -- text messages?</p> <p>9 A She did.</p> <p>10 MR. ADLONG: Again, this is -- I'm going to just note for</p> <p>11 the record that it's hearsay. And it is what it is.</p> <p>12 JUDGE SORG-GRAVES: Okay. Mr. Boigues, with the schedules</p> <p>13 and things of that nature, I know the Employer has a very easy</p> <p>14 way to verify that they're what they posted. With this</p> <p>15 document, I -- I will be asking that -- are you going to have</p> <p>16 firsthand testimony about how Mr. Cortes came to be in</p> <p>17 possession of it, other than Mr. Cortes? Like, how --</p> <p>18 MR. BOIGUES: Your Honor, this is a -- a -- a text message</p> <p>19 exchange between -- and I'll just represent it that this is</p> <p>20 a -- a -- not hearsay because these are statements by the</p> <p>21 Employer's supervisor, the director of staff development. So</p> <p>22 therefore, the statements in this document are admissions --</p> <p>23 admissions by the Employer's own agent, the director of staff</p> <p>24 development for the Employer, who is a supervisor position at</p> <p>25 the facility. Therefore, these text messages are not hearsay.</p>	<p style="text-align: right;">Page 108</p> <p>1 witness that these are actually text messages that she was</p> <p>2 engaged in. And then we can take that information then. And</p> <p>3 if for some reason we can't have her as a witness, I'll</p> <p>4 reconsider whether you can ask these question to Mr. Cortes.</p> <p>5 MR. BOIGUES: Thank you, Your Honor.</p> <p>6 Q BY MR. BOIGUES: Okay. Moving on to the eligibility of</p> <p>7 Adolfo Toral and Maria Toral. Ignacio, did you review any</p> <p>8 schedules regarding their work at the facility?</p> <p>9 A Yes. I did.</p> <p>10 Q What schedules for what months did you review?</p> <p>11 A I -- I reviewed the month of June, all the way to October,</p> <p>12 November.</p> <p>13 Q Okay. And what shift were you reviewing schedules for</p> <p>14 with respect to the Maria Toral and Adolfo Toral?</p> <p>15 A A shift that starts at 3 p.m. and ends at 11 p.m. Better</p> <p>16 known as p.m. shift.</p> <p>17 Q I am going to share with you what we have marked for</p> <p>18 identification purposes as Petitioner Exhibit Number 3, which</p> <p>19 is a -- a four-page document. I will start with page 1.</p> <p>20 That's June. Page 2 is July. Page 3 is the schedule for the</p> <p>21 month of August. And page 4 is the schedule for the month of</p> <p>22 September. Are these the schedules that you reviewed with</p> <p>23 respect to the Torals?</p> <p>24 A Yes.</p> <p>25 Q And where did you obtain these four schedules for the p.m.</p>
<p style="text-align: right;">Page 107</p> <p>1 They do not have hearsay. They have actual statements from the</p> <p>2 Employer supervisor. They are admissions and therefore should</p> <p>3 be admitted.</p> <p>4 JUDGE SORG-GRAVES: Okay. And that may indeed be the case</p> <p>5 to the right witness. But I have to agree with Mr. Adlong that</p> <p>6 this might not be the right witness.</p> <p>7 MR. BOIGUES: So for now, then I'll offer it. And if you</p> <p>8 reject it, I'll come back to it when Ms. Rivera testifies then.</p> <p>9 But for now, I already have testimony that he obtained this</p> <p>10 directly from the -- the voter, Ms. Rivera herself, as part of</p> <p>11 his investigation into her eligibility. And I'm therefore</p> <p>12 offering it at this point so that I could move on.</p> <p>13 JUDGE SORG-GRAVES: Yeah. Let's go on and hold off. And</p> <p>14 so -- because you're making some assertions about who she's</p> <p>15 communicating with here, which I think we should get from her</p> <p>16 because --</p> <p>17 MR. BOIGUES: That's why I was asking for --</p> <p>18 JUDGE SORG-GRAVES: -- it doesn't --</p> <p>19 MR. BOIGUES: -- about that information so that it could</p> <p>20 be established what she told him. And then that could be</p> <p>21 corroborated later. But I am prevented from doing that. So</p> <p>22 that's why I'm offering the document then since I am not able</p> <p>23 to ask those questions because Mr. Adlong is worried about</p> <p>24 them.</p> <p>25 JUDGE SORG-GRAVES: Again, I'll -- let's go with the</p>	<p style="text-align: right;">Page 109</p> <p>1 shift from June through September?</p> <p>2 A I'm sorry, I didn't understand what you said.</p> <p>3 Q Where -- where did you obtain the schedules from?</p> <p>4 A Oh, from the employees.</p> <p>5 Q Did you see the Torals listed on each of the schedules</p> <p>6 that we have just looked at, pages 1 through 4 of Petitioner</p> <p>7 Exhibit Number 3?</p> <p>8 A Yes. Both of their names are shown in the schedule.</p> <p>9 Q Both of their names?</p> <p>10 A Yes.</p> <p>11 MR. BOIGUES: Okay. I'd like -- I'd like to offer</p> <p>12 Petitioner Exhibit Number 3 into evidence, the schedules for</p> <p>13 June through September for the p.m. schedule for the CNAs and</p> <p>14 RNAs.</p> <p>15 JUDGE SORG-GRAVES: Mr. Adlong?</p> <p>16 MR. ADLONG: I just have one question. I just want to</p> <p>17 make sure, like, the contention -- these documents you're</p> <p>18 saying is June, July, and August, and September 2020 schedules</p> <p>19 for the CNA and the RNA? Is that it?</p> <p>20 MR. BOIGUES: I didn't hear what you just said.</p> <p>21 JUDGE SORG-GRAVES: He was asking if it was for the CNA</p> <p>22 and RNA. I only see CNAs listed in Exhibit 3.</p> <p>23 MR. BOIGUES: This one appears to be only CNAs. Correct.</p> <p>24 MR. ADLONG: Thank you, Your Honor. Yeah, no objection.</p> <p>25 JUDGE SORG-GRAVES: Okay. Petitioner Exhibit 3 is</p>


<p style="text-align: right;">Page 122</p> <p>1 Q And you only know about this document because somebody 2 told you about it, right?</p> <p>3 A No, that is not correct.</p> <p>4 Q You have firsthand knowledge of this document?</p> <p>5 A It's not just about telling me. I saw the document.</p> <p>6 Q Okay. But you've -- you've seen the document, and other 7 than laying your eyes on it, you have no other knowledge about 8 the document, right?</p> <p>9 A All that is correct. Yes.</p> <p>10 Q Okay. And for example, you have no knowledge about the 11 practice as to when Anaheim Crest would grant leave to an 12 employee, right?</p> <p>13 A Can you rephrase your question? I didn't understand.</p> <p>14 Q Okay. You've never participated in granting leave to an 15 employee at Anaheim Crest, correct?</p> <p>16 A That is correct.</p> <p>17 Q And so you have no knowledge as to when they do or do not 18 grant leave to an employee, correct?</p> <p>19 A That is correct.</p> <p>20 Q You have no knowledge about the standard practice as to 21 whether or not leave is always granted before an employee 22 starts leave, right?</p> <p>23 A Correct.</p> <p>24 Q You have no knowledge about whether it's ever granted 25 after they started leave, correct?</p>	<p style="text-align: right;">Page 124</p> <p>1 Q And this is a document that somebody took a picture of, 2 correct?</p> <p>3 A Correct.</p> <p>4 Q And then they sent it to you, right?</p> <p>5 A Correct.</p> <p>6 Q And they explained to you what this means, right?</p> <p>7 A Not necessarily.</p> <p>8 Q Not necessarily? How else did you come to figure out what 9 this means?</p> <p>10 A I have to review it and read it, understand it.</p> <p>11 Q Okay. So somebody -- so somebody told you what this 12 means, at least in some respect, correct?</p> <p>13 A No.</p> <p>14 Q No? Okay. So how do you form your basis of the knowledge 15 of what this document does and does not do?</p> <p>16 A Just by looking at every single word that is written in 17 the document and putting it all together.</p> <p>18 Q Okay.</p> <p>19 A Um-hum.</p> <p>20 Q And so but you've never used this document to administer 21 the schedule at Anaheim Crest, right?</p> <p>22 A That is correct.</p> <p>23 Q And you have no firsthand knowledge of how many of these 24 shifts people actually work, do you?</p> <p>25 A That is correct.</p>
<p style="text-align: right;">Page 123</p> <p>1 A That is correct.</p> <p>2 Q So basically, you just looked at this piece of paper and 3 said, I've got problems with it, right?</p> <p>4 A Not necessarily.</p> <p>5 Q Not necessarily? Okay. So how did you come to have any 6 problem with this document then, if you've never seen it before 7 and didn't participate in the creation of it?</p> <p>8 A Yeah. In -- I -- I've been working for SEIU for six years 9 as an external union organizer, but I -- in my career, I -- I 10 have a total of 16 years as a union organizer. And part of my 11 work has been providing representation, which means having 12 access to employees' files, and review documents from different 13 cases, to be able to deal with grievances.</p> <p>14 Q Did you ever have access to any Anaheim Crest files?</p> <p>15 A No, I did not.</p> <p>16 Q Okay. And you haven't had any access to Anaheim Crest 17 files to date to deal with grievances, either; have you?</p> <p>18 A No, that is correct.</p> <p>19 Q Okay. We're going to turn your attention now to what's 20 been marked as Petitioner's Exhibit 2. Do you recognize this 21 document?</p> <p>22 A Yes, I do.</p> <p>23 Q This is another document that's inside the facility, 24 correct?</p> <p>25 A It is correct.</p>	<p style="text-align: right;">Page 125</p> <p>1 Q Okay. And the same can be said when we go to Petitioner's 2 Exhibit 2, page 2; you don't have any firsthand knowledge as to 3 whether or not any employee on the schedule worked any of the 4 shift on the schedule, right?</p> <p>5 A That is correct.</p> <p>6 Q All right. So we're going to turn your attention to 7 Petitioner's Exhibit 3, page 1.</p> <p>8 This is another document. This is a picture from Anaheim 9 Crest, right?</p> <p>10 A It is correct.</p> <p>11 Q Somebody sent it to you, correct?</p> <p>12 A Yes.</p> <p>13 Q And the same can be said for page 2 of Exhibit -- of 14 Exhibit 3, right?</p> <p>15 A It is correct.</p> <p>16 Q And the same can be said for page 3, correct?</p> <p>17 A Correct.</p> <p>18 Q And the same can be said for page 4, correct?</p> <p>19 A Correct.</p> <p>20 Q Okay. And so somebody took these pictures and sent them 21 to you, right?</p> <p>22 A Yes.</p> <p>23 Q And again, you've never used this document -- these 24 documents to administer the schedule at Anaheim Crest, correct?</p> <p>25 MR. BOIGUES: Asked and answered.</p>

<p style="text-align: right;">Page 126</p> <p>1 JUDGE SORG-GRAVES: I'll allow it again, Mr. Adlong, but I</p> <p>2 think I have the point. But you can -- well, Mr. Cortes --</p> <p>3 MR. ADLONG: Well, I just want to make sure. They -- they</p> <p>4 put in a bunch of different schedules, so maybe he has at one</p> <p>5 of the schedules. I -- I'm just -- we're trying to make sure</p> <p>6 it's clear on the record because he went through -- he's put in</p> <p>7 at least, like, four or five exhibits of schedules. So I just</p> <p>8 wanted to make sure it's the same answer for every schedule.</p> <p>9 I mean, I think part two of, like, the Union's position</p> <p>10 was like, we can put it in, and then they can rebut it. So</p> <p>11 I -- like, I'd like to feel the ability to do it.</p> <p>12 MR. BOIGUES: If you think it's not authentic, go for it.</p> <p>13 Try it.</p> <p>14 MR. ADLONG: So -- okay. That's fine, Your Honor. I'm --</p> <p>15 it doesn't bother me. I'm used to it.</p> <p>16 Q BY MR. ADLONG: Mr. Cortes, so you've never used these</p> <p>17 documents to administer the schedule, correct?</p> <p>18 A Correct.</p> <p>19 Q And you don't have any firsthand knowledge about whether</p> <p>20 or not these employees on the schedule on Exhibit 1, page 1,</p> <p>21 page 2, page 3, or page 4 -- you don't know whether or not they</p> <p>22 worked any of those schedules -- scheduled dates, right?</p> <p>23 A Not necessarily.</p> <p>24 Q You have firsthand knowledge that says that you can tell</p> <p>25 me, I know that this person worked this day on this schedule?</p>	<p style="text-align: right;">Page 128</p> <p>1 Q Okay. So we're going to turn your attention to Exhibit 5.</p> <p>2 These are paystubs. Did you retrieve these paystubs?</p> <p>3 A Can you ask that in a different way?</p> <p>4 Q How did you get these paystubs?</p> <p>5 A Through the workers themselves, Adolfo Toral --</p> <p>6 Q Okay.</p> <p>7 A -- and Maria Toral.</p> <p>8 Q Okay. So they got the schedules -- they -- they got the</p> <p>9 paystubs. They took pictures. Then they sent them to you.</p> <p>10 Right?</p> <p>11 A That is correct.</p> <p>12 Q All right. So when you look at Employer's Exhibit --</p> <p>13 excuse me -- Petitioner's Exhibit 5, page 1, where it says --</p> <p>14 do you know what the pay period is on here?</p> <p>15 A Yes, it's marked on the right top corner.</p> <p>16 Q Okay. So what's the pay period?</p> <p>17 A It's June 1st to June 15.</p> <p>18 Q Okay. And then right here, it says that an individual was</p> <p>19 paid 14.8 hours, right?</p> <p>20 A That is correct, yes.</p> <p>21 Q You don't know what day of the week that those -- that</p> <p>22 this individual worked, do you?</p> <p>23 A That is correct.</p> <p>24 Q Okay. So when we take a look at Petitioner exhibit page</p> <p>25 1, Petitioner exhibit page 2, Petitioner exhibit page 3,</p>
<p style="text-align: right;">Page 127</p> <p>1 A Some -- some of that information -- I have it firsthand</p> <p>2 from the workers themselves, telling me what day they worked</p> <p>3 and what they didn't work.</p> <p>4 Q Okay. So other than somebody telling you something</p> <p>5 outside of this hearing, you have no other knowledge about</p> <p>6 whether or not somebody worked on this schedule, right?</p> <p>7 A Correct.</p> <p>8 Q Okay. So turning your attention to Petitioner Exhibit 4,</p> <p>9 this is another schedule that's another picture that somebody</p> <p>10 took, correct?</p> <p>11 A Correct.</p> <p>12 Q And they gave this to you, right?</p> <p>13 A Correct.</p> <p>14 Q Okay. And again, you never used this to administer the</p> <p>15 schedule at Anaheim Crest, correct?</p> <p>16 A Correct.</p> <p>17 Q And again, you have no knowledge whether or not these</p> <p>18 schedule -- these scheduled shifts on here were actually worked</p> <p>19 by any of the employees, do you?</p> <p>20 A As -- as I mentioned before, some of the workers I kept in</p> <p>21 contact, to make sure that they were working their shift.</p> <p>22 Q But other than somebody telling you, hey, I worked the</p> <p>23 shift, you don't know whether or not they worked a shift,</p> <p>24 right?</p> <p>25 A That is correct.</p>	<p style="text-align: right;">Page 129</p> <p>1 Petitioner exhibit page 4, and Petitioner exhibit page 5, and</p> <p>2 Petitioner exhibit page 6, those are all pictures that you</p> <p>3 received, right?</p> <p>4 A That is correct.</p> <p>5 Q And other than somebody -- other than you reading the</p> <p>6 document and figuring out what it means and somebody telling</p> <p>7 you what it means, you don't have any knowledge of what this</p> <p>8 document does or does not say, right?</p> <p>9 A No, that's the same thing, like, as the schedule. When I</p> <p>10 read the legend, when I go through the information, I -- I just</p> <p>11 interpret what I see in the document.</p> <p>12 Q Okay. And when we go through -- let's see. That's 5. So</p> <p>13 I'm going to take you to 6 now, right now. When we take a look</p> <p>14 at 6, this is Adolfo Toral's paystub, right?</p> <p>15 A Yes, it is correct.</p> <p>16 Q For June 1 through June 15, right?</p> <p>17 A That is correct.</p> <p>18 Q And this says that he was paid 14.85 hours, right, during</p> <p>19 that pay period?</p> <p>20 A That is correct.</p> <p>21 Q You don't know what days he worked during that pay period,</p> <p>22 do you?</p> <p>23 A That not necessarily is correct, because I cross-checked</p> <p>24 that with their schedules.</p> <p>25 Q Okay. Do you or do you not know what days he worked that</p>

<p style="text-align: right;">Page 170</p> <p>1 MR. BOIGUES: Thank you, Your Honor. Again --</p> <p>2 JUDGE SORG-GRAVES: Thank you.</p> <p>3 MR. BOIGUES: -- my apologies for the delay. I know it's</p> <p>4 late at your end. Thank you.</p> <p>5 JUDGE SORG-GRAVES: That's okay.</p> <p>6 (Off the record at 2:25 p.m.)</p> <p>7 JUDGE SORG-GRAVES: Okay, Mr. Adlong, do you know if</p> <p>8 there's any way that we can have access to her earlier?</p> <p>9 MR. ADLONG: We're looking into it. I don't know one way</p> <p>10 or the other, but I know we can get her a -- what I was told,</p> <p>11 we're pretty sure we can get her a conference room, if we can't</p> <p>12 get her beforehand. I'm waiting to hear back, so --</p> <p>13 JUDGE SORG-GRAVES: Okay. We'll -- we'll just hold on for</p> <p>14 a few.</p> <p>15 (Off the record at 2:26 p.m.)</p> <p>16 JUDGE SORG-GRAVES: On the record. Mr. Boigues, I don't</p> <p>17 know -- I can't recall now if you actually officially called</p> <p>18 her or not.</p> <p>19 MR. BOIGUES: I have not, but I will call --</p> <p>20 JUDGE SORG-GRAVES: Give me one second. I'm sorry. One</p> <p>21 second.</p> <p>22 MR. BOIGUES: Oh.</p> <p>23 JUDGE SORG-GRAVES: I'm sorry. My house has gotten busier</p> <p>24 now too, so I'll make sure they stay quiet. Go ahead. I'm</p> <p>25 sorry, Mr. Boigues.</p>	<p style="text-align: right;">Page 172</p> <p>1 your full name and spell it for us?</p> <p>2 THE WITNESS: I -- I can't hear you good, so --</p> <p>3 JUDGE SORG-GRAVES: Can -- can you say --</p> <p>4 THE WITNESS: -- and --</p> <p>5 JUDGE SORG-GRAVES: -- your whole name for me?</p> <p>6 THE WITNESS: Oh. Yesica Rivera, with a Y and --</p> <p>7 JUDGE SORG-GRAVES: And --</p> <p>8 THE WITNESS: -- and one S.</p> <p>9 JUDGE SORG-GRAVES: Go ahead and spell it for</p> <p>10 THE WITNESS: Y-E-S-I-C-A. My last name, R-I-V-E-R-A</p> <p>11 JUDGE SORG-GRAVES: Thank you, ma'am. Okay --</p> <p>12 THE WITNESS: Um-hum.</p> <p>13 JUDGE SORG-GRAVES: -- Mr. Boigues.</p> <p>14 MR. BOIGUES: Thank you, Your Honor.</p> <p>15 DIRECT EXAMINATION</p> <p>16 Q BY MR. BOIGUES: Yesica, how long have you been working at</p> <p>17 the Anaheim Crest Nursing Center?</p> <p>18 A 10 years.</p> <p>19 Q And what position do you work in in the center?</p> <p>20 A CNA.</p> <p>21 Q Okay. (audio interference) at the facility?</p> <p>22 A Sorry?</p> <p>23 Q Are you a full-time employee?</p> <p>24 A No. Right now, part-time.</p> <p>25 Q Okay. Have you been a part-time employee the entire 10</p>
<p style="text-align: right;">Page 171</p> <p>1 MR. BOIGUES: Sure. The Union will call -- Petitioner</p> <p>2 will call his next witness, Yesica Rivera.</p> <p>3 JUDGE SORG-GRAVES: Ms. Rivera, my name is Kimberly Sorg-</p> <p>4 Graves. I'm the Hearing Officer for this hearing. I'm going</p> <p>5 to ask you to take your oath. If you could raise your right</p> <p>6 hand -- I know the pictures are small, but so -- so I can see.</p> <p>7 Maybe -- there you go. Thank you.</p> <p>8 Whereupon,</p> <p>9 YESICA RIVERA</p> <p>10 having been duly sworn, was called as a witness herein and was</p> <p>11 examined and testified, telephonically as follows:</p> <p>12 JUDGE SORG-GRAVES: Thank you. Are you in a room by</p> <p>13 yourself?</p> <p>14 THE WITNESS: Sorry?</p> <p>15 JUDGE SORG-GRAVES: Are you in a room by yourself?</p> <p>16 THE WITNESS: Oh, yeah. Uh-huh.</p> <p>17 JUDGE SORG-GRAVES: Thank you. And while you're</p> <p>18 testifying today during the hearing, if I'm asking you to not</p> <p>19 look at any text messages or papers or emails or anything like</p> <p>20 that, unless one of the attorneys or I ask you to do that.</p> <p>21 Okay?</p> <p>22 THE WITNESS: Okay.</p> <p>23 JUDGE SORG-GRAVES: Okay, thank you. Mr. Boigues?</p> <p>24 MR. BOIGUES: Thank you, Your Honor.</p> <p>25 JUDGE SORG-GRAVES: Oh, I'm sorry. Ma'am, could you state</p>	<p style="text-align: right;">Page 173</p> <p>1 years that you worked there?</p> <p>2 A Yeah, I've been full-time for eight years and two years</p> <p>3 part-time.</p> <p>4 Q Okay. When did you -- two years ago, you started going</p> <p>5 part-time?</p> <p>6 A Yeah.</p> <p>7 Q And why did you switch from full-time to part-time</p> <p>8 employment?</p> <p>9 A Because I went for maternity leave, so after that, I come</p> <p>10 back for part-time.</p> <p>11 Q And when you started working part-time, what was your</p> <p>12 schedule?</p> <p>13 A When I come back from maternity leave, my schedule was</p> <p>14 Wednesday, Thursday, and Friday every week.</p> <p>15 Q Did that change at some point, your schedule?</p> <p>16 A No.</p> <p>17 Q Are -- are you still working three days a week right now?</p> <p>18 A No. Right now, no. Right now, I'm working Wednesday and</p> <p>19 Thursday every week.</p> <p>20 Q Was there a time period when you stopped working the</p> <p>21 facility?</p> <p>22 A Yeah. I -- I asked for -- like, in April when the COVID</p> <p>23 start, I stopped work in April, and I come back on July.</p> <p>24 Q When you came back in July --</p> <p>25 A Um-hum.</p>

<p style="text-align: right;">Page 174</p> <p>1 Q -- what schedule did you work?</p> <p>2 A I asked for this, every Thursday.</p> <p>3 Q Okay. And why did you ask for every Thursday?</p> <p>4 A Why?</p> <p>5 Q Yes, why?</p> <p>6 A Oh, because I will have babysitter --</p> <p>7 Q Okay.</p> <p>8 A -- so I have to stay with my daughters.</p> <p>9 Q Your daughters. Okay.</p> <p>10 A Um-hum.</p> <p>11 Q And that -- that is when you came back in July?</p> <p>12 A Um-hum.</p> <p>13 Q Okay. Is that a yes? You have to say yes or no.</p> <p>14 A Yes. Yes.</p> <p>15 Q Okay. Did you then work every Thursday in August as well, or did that change?</p> <p>17 A No, in August I told my DSD I just work one Thursday per check.</p> <p>19 Q And why did you do that for August?</p> <p>20 A For the same, because I have to stay with my daughters.</p> <p>21 Q Okay. In July, did you work every Thursday?</p> <p>22 A Um-hum.</p> <p>23 Q Is that a yes?</p> <p>24 A Yes.</p> <p>25 Q And in August, did you work every other week, every</p>	<p style="text-align: right;">Page 176</p> <p>1 Q Okay.</p> <p>2 A Um-hum.</p> <p>3 Q And how do you know which days you are going to work each coming month?</p> <p>5 A For my schedule?</p> <p>6 Q Yes. How do you know? What do -- how do you find out your schedule?</p> <p>8 A I told the DSD. Every month, I have to tell her my days, which days I'm going to work every month. Uh-huh.</p> <p>10 Q Do you tell her ahead of time?</p> <p>11 A Before the month start.</p> <p>12 Q I see.</p> <p>13 A The days that you told the DSD, are those the days that you are actually scheduled to work each month?</p> <p>15 A Yeah.</p> <p>16 Q I am going to share with you on the screen, Yesica, a document that we have in this case that is Petitioner Exhibit 9 for the record. It's a three-page document. Can you see that document on your phone, Yesica?</p> <p>20 A Yes.</p> <p>21 Q Okay. That's the first page. I'm showing you there the first half of the first page. Then it goes to the second page. Here's the second page. And then I get to the third page.</p> <p>24 It's that document. What is this -- what are (audio interference) can you explain to us what is it that we're</p>
<p style="text-align: right;">Page 175</p> <p>1 Thursday every --</p> <p>2 A Yes.</p> <p>3 Q -- other week? Okay.</p> <p>4 A Yes.</p> <p>5 Q What about in September? What was your schedule in September?</p> <p>7 A September, I come back for every Thursday.</p> <p>8 Q Every Thursday?</p> <p>9 A Uh-huh. Yes.</p> <p>10 Q Okay. And then in October, what did your schedule go back to or change to?</p> <p>12 A October -- now it's November or December -- every Thursday.</p> <p>14 Q You told us that at some point you went back to two days per week?</p> <p>16 A Yes.</p> <p>17 Q When was that? Was that in November?</p> <p>18 A No, October.</p> <p>19 Q October.</p> <p>20 A Oh, October, I went every Thursday --</p> <p>21 Q Okay.</p> <p>22 A -- and November, I start to work two -- two days a week.</p> <p>23 Q Okay. And why were you able to go back to two days per week in November? What changed?</p> <p>25 A Because I need money, so I have two back.</p>	<p style="text-align: right;">Page 177</p> <p>1 looking at here?</p> <p>2 A It's when I come back from April. It's my -- I text my DSD, so he text me back.</p> <p>4 Q I see. And what were you texting your DSD about when you were coming back after the leave in April? What were you texting him about?</p> <p>7 A I text him I have to come back for June 17th. I have the date that I have to come back, June -- June 17th.</p> <p>9 Q Okay.</p> <p>10 A So I text him about that.</p> <p>11 Q What is the DSD? What does that mean, DSD?</p> <p>12 A My -- my manager.</p> <p>13 Q Your manager. Okay.</p> <p>14 A Uh-huh.</p> <p>15 Q And what's the name of this manager that you were communicating by text with?</p> <p>17 A Marx Concepcion.</p> <p>18 Q Okay. Did you give these text messages, copies of these text messages, to anyone?</p> <p>20 A No.</p> <p>21 Q Did you make a screenshot of them and give them to Ignacio Cortes?</p> <p>23 A Yes.</p> <p>24 Q Do you know who Ignacio Cortes is?</p> <p>25 A Yeah, it's the Union representative.</p>

<p style="text-align: right;">Page 178</p> <p>1 MR. BOIGUES: Okay. Thank you. I'd like to offer 2 Petitioner Exhibit number 9 into evidence, Your Honor. 3 JUDGE SORG-GRAVES: Mr. Adlong? 4 MR. ADLONG: No objection. 5 JUDGE SORG-GRAVES: Petitioner 9 is admitted. 6 (Petitioner Exhibit Number 9 Received into Evidence) 7 MR. BOIGUES: That's all the questions I have for Yesica, 8 Your Honor. 9 JUDGE SORG-GRAVES: Mr. Adlong? Let's hold for just a 10 second. I think there's announcements going on. Okay. Mr. 11 Adlong? 12 CROSS-EXAMINATION 13 Q BY MR. ADLONG: Ms. Rivera, I'm the counsel for the 14 Employer. My name is Daniel Adlong. I'm going to ask you some 15 questions. I don't have very many questions for you, but I'll 16 just ask that if you can please withhold any answer until I 17 complete my question. Can you do that for me, please? 18 A Yes. 19 Q Okay. And then, to the extent -- if you answer a 20 question, I will assume you understand it, unless you ask for 21 further clarification. Is that okay? 22 A Yeah. 23 Q Okay. So you said you were a full-time employee at one 24 point, correct? 25 A Yes.</p>	<p style="text-align: right;">Page 180</p> <p>1 JUDGE SORG-GRAVES: Okay? Thank you so much. If you 2 could just hit your end button for us. Thank you. 3 THE WITNESS: Okay. Thank you. 4 JUDGE SORG-GRAVES: Okay, Mr. Boigues, do you know how 5 much more -- 6 MR. BOIGUES: I don't have anything further witnesses, 7 Your Honor. 8 JUDGE SORG-GRAVES: Mr. Adlong? 9 MR. ADLONG: Can we go off the record for a moment, 10 please. 11 JUDGE SORG-GRAVES: Yes. Let's convene in five. 12 MR. ADLONG: Okay. 13 JUDGE SORG-GRAVES: Okay? 14 (Off the record at 2:51 p.m.) 15 JUDGE SORG-GRAVES: Let's go back on the record. Okay, 16 Mr. Adlong? 17 MR. ADLONG: We don't have any other -- well, actually, 18 what I want -- did want to do is wanted to know if we could put 19 the decision and direction of election into the record. 20 JUDGE SORG-GRAVES: And the purpose for it? I mean, 21 purpose of -- 22 MR. ADLONG: I think it's just -- I think it's just, like, 23 background on the facility, more than anything. 24 JUDGE SORG-GRAVES: Mr. Boigues, do you have any 25 objection?</p>
<p style="text-align: right;">Page 179</p> <p>1 Q And then you changed your status, correct? 2 A Yes. 3 Q And then you said in April, you started taking time off, 4 right? 5 A Yes. 6 Q Okay. And then eventually, you started to come back, 7 right? 8 A Yes. 9 Q And you just basically worked whatever days you told the 10 Employer you could work, right? 11 A Yes. 12 Q You were in control of setting your schedule, right? 13 A Yes. 14 MR. ADLONG: Okay. No further questions for this witness? 15 MR. BOIGUES: Thank you, Yesica. I don't have any -- 16 anything further. 17 JUDGE SORG-GRAVES: Okay. Thank you, Ms. Rivera. Thank 18 you for making yourself available. Okay? If you would refrain 19 from talking to anybody your testimony until you've heard that 20 the hearing's all the way complete. It should be later today 21 sometime. Okay? 22 THE WITNESS: Yeah, okay. 23 JUDGE SORG-GRAVES: After that, you can speak as freely as 24 you wish. 25 THE WITNESS: Oh -- okay.</p>	<p style="text-align: right;">Page 181</p> <p>1 MR. BOIGUES: I don't have any objection to it, Your 2 Honor. It's an Employer exhibit. 3 JUDGE SORG-GRAVES: Is it in -- it's not one of the 4 exhibits you've already communicated? 5 MR. ADLONG: It is not. I mean, it is on the website. 6 JUDGE SORG-GRAVES: Yeah, I think it's one that, since 7 it's a -- it's one I can take notice of, if that's what you 8 would request that I do. 9 MR. ADLONG: Yeah, that's what I was going to ask. 10 JUDGE SORG-GRAVES: Okay. 11 MR. SIMMONS: I can pull a copy if need be. 12 MR. ADLONG: Here's the deal. I've got this document up 13 right here. Any -- let's see. Oh, I'm going to have to save 14 this first. Save it. 15 JUDGE SORG-GRAVES: Well, I think that it's a matter of if 16 we decide to admit it, it's something that you can make sure 17 that you get to the court reporter. I don't know if it's -- 18 this is my question, do we want to actually put it in the 19 record, versus just requesting that I take notice of it? 20 MR. ADLONG: I'm fine if you'll just take judicial notice 21 of it, because then I can just -- I can just use it based off 22 the website, and then we don't have to deal with getting it 23 Bates labeled and stuff right now. 24 JUDGE SORG-GRAVES: And that works for me. Mr. Boigues, 25 do you have any objections to handling it that way?</p>

<p style="text-align: right;">Page 182</p> <p>1 MR. BOIGUES: No problem, Your Honor. Thank you.</p> <p>2 JUDGE SORG-GRAVES: Okay. Then let's handle it that way,</p> <p>3 and that way we don't have to wait to verify that the court</p> <p>4 reporter has it, considering there's a fairly quick turnaround</p> <p>5 for the court reporter in these cases.</p> <p>6 Mr. Boigues, do you have anything further that I should</p> <p>7 consider?</p> <p>8 MR. BOIGUES: Nothing from the Petitioner, Your Honor.</p> <p>9 Thank you.</p> <p>10 JUDGE SORG-GRAVES: And Mr. Adlong?</p> <p>11 MR. ADLONG: Nothing from us, either.</p> <p>12 JUDGE SORG-GRAVES: Okay. Mr. Baldwin, do you have all</p> <p>13 the exhibits? Any -- any concerns about that?</p> <p>14 THE COURT REPORTER: (No audible response)</p> <p>15 JUDGE SORG-GRAVES: That is what I have marked as well.</p> <p>16 Okay. And then, do you have an estimate as to the pages for</p> <p>17 the transcript?</p> <p>18 THE COURT REPORTER: (No audible response)</p> <p>19 JUDGE SORG-GRAVES: Okay. And gentlemen, Mr. Adlong, Mr.</p> <p>20 Boigues, are you going to request to file a brief?</p> <p>21 MR. ADLONG: We're going to request to file a brief.</p> <p>22 MR. BOIGUES: That's fine, Your Honor.</p> <p>23 JUDGE SORG-GRAVES: Okay. And that is up to you. If you</p> <p>24 are going to file a brief, they are due in seven days from</p> <p>25 today, five business days or seven calendar days.</p>	<p style="text-align: right;">Page 184</p> <p>1 will issue a decision as soon as I possibly can. Thank you for</p> <p>2 your time, everyone.</p> <p>3 MR. BOIGUES: Much appreciated, Your Honor. Have a good</p> <p>4 day. Bye-bye.</p> <p>5 JUDGE SORG-GRAVES: You too. Bye-bye.</p> <p>6 (Whereupon, the hearing in the above-entitled matter was closed</p> <p>7 at 3:01 p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 183</p> <p>1 MR. BOIGUES: Wait, Your Honor. Just to make sure we're</p> <p>2 talking apples-to-apples, so the brief is going to be due the</p> <p>3 8th?</p> <p>4 JUDGE SORG-GRAVES: On December 8th, yes.</p> <p>5 MR. BOIGUES: Okay.</p> <p>6 JUDGE SORG-GRAVES: And it's -- if there were opening</p> <p>7 statements -- that's not necessary, but if you are choosing to</p> <p>8 file a brief, they must be filed by December 8th, okay? And in</p> <p>9 order to do that, you will have to ask for an expedited</p> <p>10 transcript, if -- in order to meet that time frame. And it's</p> <p>11 my understanding that -- Mr. Baldwin, that these transcripts</p> <p>12 are turned around in about three or four days? Is that right?</p> <p>13 THE COURT REPORTER: (No audible response)</p> <p>14 JUDGE SORG-GRAVES: Okay. So that -- that puts you (audio</p> <p>15 interference) what time frame you're working with there. Is</p> <p>16 there anything further, Mr. Boigues?</p> <p>17 MR. BOIGUES: Nothing from Petitioner, Your Honor. Thank</p> <p>18 you.</p> <p>19 JUDGE SORG-GRAVES: Mr. Adlong?</p> <p>20 MR. ADLONG: Nothing from us, Your Honor.</p> <p>21 JUDGE SORG-GRAVES: And Mr. Simmons, you don't have</p> <p>22 anything to add with?</p> <p>23 MR. SIMMONS: No, Your Honor.</p> <p>24 JUDGE SORG-GRAVES: Okay, thank you. As there's nothing</p> <p>25 further, I am going to announce the hearing is closed, and I</p>	<p style="text-align: right;">Page 185</p> <p style="text-align: center;">C E R T I F I C A T I O N</p> <p>1 This is to certify that the attached proceedings before the</p> <p>2 National Labor Relations Board (NLRB), Region 21, Case Number</p> <p>3 21-RC-2647, 3067 Orange Ave, LLC d/b/a Anaheim Crest Nursing</p> <p>4 Center and Service Employees International Union, Local 2015,</p> <p>5 at the National Labor Relations Board, Region 21, 312 N. Spring</p> <p>6 Street, Suite 10150, Los Angeles, California 90012, on December</p> <p>7 1, 2020, at 9:22 a.m. was held according to the record, and</p> <p>8 that this is the original, complete, and true and accurate</p> <p>9 transcript that has been compared to the reporting or</p> <p>10 recording, accomplished at the hearing, that the exhibit files</p> <p>11 have been checked for completeness and no exhibits received in</p> <p>12 evidence or in the rejected exhibit files are missing.</p> <p>13</p> <p>14</p> <p>15 </p> <p>16</p> <p>17</p> <p>18 GARY BALDWIN</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Official Reporter</p>

ATTACHMENT D

ATTACHMENT D – Petitioner’s Exhibit 2

DIETARY DEPARTMENT SCHEDULE -2020

Aug-20	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
EMPLOYEE NAME	S	S	T	T	W	TH	F	S	S	M	T	W	TH	F	S	S	M	T	W	TH	F	S	S	M	T	W	TH	F	S	S	M
COOKS																															
GARCIA, CARMEN	1	0	0	1	1	1	1	1	0	1	1	1	1	0	0	1	1	1	1	0	0	1	1	1	1	1	0	0	1	1	1
SANDRA PADILLA	0	1	1	2	2	0	0	1	1	2	2	0	0	1	1	2	2	0	0	1	1	2	2	0	0	1	1	2	2	0	0
ROSA ORTIZ	2	2	2	0	0	2	2	2	2	0	0	2	2	2	2	2	0	0	2	2	2	2	0	0	2	2	2	2	0	0	0
KOREAN COOK																															
CALDERON GABRIELA	0	0	2	2	2	2	2	0	0	2	2	2	2	2	0	0	2	2	2	2	2	0	0	2	2	2	2	2	0	0	2
Meong suk kim																															
OLGA PASCUAL	V	V	5	5	5	0	0	5	5	5	5	5	0	0	5	5	5	5	5	0	0	5	5	5	5	5	0	0	5	5	5
DIETARY AIDE																															
FRANCO KREN	3	3	3	0	0	3	3	3	3	0	0	3	3	3	3	0	0	3	3	3	3	3	0	0	3	3	3	0	0	3	3
VAZQUEZ REYNA	4	5	0	3	3	4	4	0	0	3	3	4	4	5	0	3	3	4	4	0	0	3	3	4	4	0	0	3	3	4	4
MACARIO BARRETO	0	4	4	4	4	0	0	4	4	4	4	0	0	4	4	4	4	0	0	4	4	4	4	0	0	4	4	4	4	0	0
SUPERVISOR																															
CARMONA MARIA	2	0	0	X	X	X	0	0	X	X	X	X	X	X	0	X	X	X	X	X	X	0	X	X	X	X	X	0	0	0	X
Total per day ---->	5	5	6	6	6	5	5	5	5	6	6	6	5	5	5	5	5	6	6	5	5	5	5	6	6	6	5	5	5	5	6

- 1.Am cook 5.00-1.30
- 2.-Pm cook 10.00-6.30
- 2.- PM korean cook 9.30.-6.00
- 3.. - Aide 5.00 am- 1.00 pm.
- 4.--Aide 12.30 pm- 8.30 pm.
- 5.-Aide 10.30pm./ 6.30 pm.

ANAHEIM CREST DIETARY SCHEDULE -2020

Sep-20		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
EMPLOYEE NAME		T	W	TH	F	S	S	M	T	W	TH	F	S	S	M	T	W	TH	F	S	S	M	T	W	TH	F	S	S	M	T	W
COOKS																															
GARCIA, CARMEN		0	0	1	1	1	1	0	0	1	1	1	1	0	0	1	1	1	1	0	0	1	1	1	1	0	0	1	1	1	1
SANDRA PADILLA		2K	2K	2	2	0	0	2K	2K	2	2	0	0	1	2K	2	2	2	0	0	1	2	2	0	0	1	1	2	2	0	0
ROSA ORTIZ		2	2	0	0	2	2	2	2	0	0	2	2	2	2	0	0	0	2	2	2	0	0	2	2	2	2	2	0	0	2
KOREAN COOK																															
GABRIELA CALDERON		1	1	2	2	0	0	1	1	2	2	2	0	0	1	2	2	2	2	0	0	2	2	2	2	2	2	0	0	2	2
OLGA PASCUAL		5	5	0	0	5	5	5	5	5	0	0	5	5	5	5	5	5	0	0	5	5	5	5	5	0	0	5	5	5	5
DIETARY AIDE																															
FRANCO KREN		3	3	0	0	3	3	3	3	0	0	3	3	3	3	3	0	0	3	3	3	3	0	0	3	3	3	3	0	0	3
VASQUEZ, REYNA		0	0	3	3	4	4	0	0	3	3	4	4	0	0	0	3	3	4	4	0	0	3	3	4	4	0	0	3	3	4
BARRETO, MACARIO		4	4	4	4	0	0	4	4	4	4	0	0	4	4	4	4	4	4	0	0	4	4	4	4	0	0	4	4	4	4
SUPERVISOR																															
MARIA CARMONA																															
Total per day ----->		6	6	5	5	5	5	6	6	6	5	5	5	5	5	5	6	6	6	5	5	5	5	6	6	6	5	5	5	5	6

4.--Aide 12.30 pm- 8.30 pm.
5.-Aide 10.30pm./ 6.30 pm.

CLEANING

V- Vacation
R- requested

cook 5.00-1.30
cook 10.00-6.30
korean cook 9.30.-6.00

ATTACHMENT D – Petitioner’s Exhibit 8

NURSING CENTER
JUNE 2020

Subject to change according to facility needs

**BY THE ACTIVITY
E NURSING STAFF.**

M. Concepcion Lvn, DSD
Approved by: Marx Concepcion, DSD
Released: 5/23/2020

NURSING CENTER
CNA/RNA MONTHLY SCHEDULE
JULY 2020

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
NAMES	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F
7 to 3 SHIFT																															
CNA FT Blanca Zelaya	X	X	X				X	X	X	X			X	X	X	X		X	X	X	X		X			X	X	X			X
CNA FT Betty Avendano			X	X	X				X	X	X	X			X	X	X	X			X	X	X	X			X	X	X	X	
CNA FT Johanna Ortega	X			X	X	X	X			X	X	X	X			X	X	X	X			X	X	X	X			X	X	X	X
CNA FT Arlene Rivo	X	X				X	X	X	X				X	X	X	X				X	X	X	X				X	X	X	X	
CNA FT Leticia Perez	X	X	X	X	X		X	X	X	X				X	X	X	X			X	X	X	X		X		X	X	X	X	
CNA FT Marisela Canales	X			X	X	X	X			X	X		X	X		X	X	X	X		X	X	X	X	X		X	X	X	X	
CNA FT Modesta Sanchez		X	X	X	X					X	X			X	X	X	X			X	X	X	X			X	X	X	X		
CNA FT Julia Mejia			X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X		X	X	X	X	X	X	X	X	X	
CNA FT Graciela Esquivel		X	X	X	X	X		X	X	X	X			X	X	X	X	X		X	X	X		X	X	X	X	X	X		X
CNA FT Solidad Passagne	X	X	X	X		X	X	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
CNA PT Yesica Rivera	X	X							X						X								X						X		
CNA PT Vidiriana Aboytes									X						X						X						X	X			
CNA PT Madison Sampson							X	X			X		X	X	X	X	X		X	X	X	X		X		X	X	X	X	X	
CNA PT Lakisha Rodriguez	X	X	X			X	X	X		X			X			X	X					X	X	X				X	X	X	
CNA FT Edward Garcia					X	X						X		X				X		X				X	X						
NEW HIRE																															
TOTAL:	8	8	8	8	8	8	8	8	9	9	8	7	9	9	9	10	9	8	7	9	9	10	8	8	9	8	9	9	9	7	9
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
NAMES	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F
RNA																															
CNA FT Maximo Martinez			X	X	X					X	X	X												X	X		X		X	X	X
CNA FT Arianna Garciduenas		X	X		X	X			X	X	X	X			X	X	X	X	X	X	X	X	X	X			X	X	X	X	
CNA FT Walter Marroquin	X			X	X	X	X	X					X	X	X			X		X	X	X					X	X	X	X	
CNA FT Edward Garcia	X	X					X	X			X		X				X		X					X		X		X	X	X	
TOTAL:	2	2	2	2	3	2	2	2	1	2	3	2	2	2	2	1	2	2	2	2	2	1	1	2	2	2	2	2	3	2	2

Approved by: Marx Concepcion, DSD
Released: 6/19/2020

Subject to change according to facility needs

To report a case or outbreak of any disease, contact the Communicable Disease Reporting System
Tel: (888) 397-3993 - Fax: (888) 397-3778
Health Professionals Reporting Webpage: www.publichealth.lacounty.gov/clinicians/report

Orange County Public Health (714) 834 8180

Public Health Contact Katie O'Donnell
(714) 834-8180
1719 17th Street
Santa Ana, CA

STAPLES

PETITIONER EXH. 8 - PAGE 3 of 5

NUISING CENTER
CNA/RNA MONTHLY SCHEDULE
AUGUST 2020

NAMES	AUGUST 2020																															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
7 to 3 SHIFT	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	
CNA FT Blanca Zelaya	RO	RO	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
CNA FT Betty Avendano				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
CNA FT Johanna Ortega			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
CNA FT Solidad Passigane	X	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
CNA FT Edward Garcia																																
CNA FT Modesta Sanchez	X	X	X	X	X		X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
CNA FT Julia Mejia	X	X	X	X			X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
CNA FT Graciela Esquivel	X	X	X	X			X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
CNA FT Veronica Casique	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
CNA PT Yessica Rivera																																
CNA PT Yadiriana Aboytes							X							X						X					X						X	
CNA FT Mariela Canales					X	X			X	X						X	X							X	X					X	X	
CNA FT Arlene Rivo													X	X					X	X					X	X						
CNA PT Lakisha Rodriguez																																
NEW HIRE																																
TOTAL:	6	5	7	7	6	8	8	7	6	7	6	6	8	8	7	6	6	6	8	9	7	7	5	6	8	9	6	6	6	5	8	

NAMES	AUGUST 2020																														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
RNA	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M
CNA PT Maximo Martinez	X	X					X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X			X	X	X	X
CNA FT Arianna Garciduenas	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Walter Marroquin	X	X	X	X					X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Edward Garcia	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
TOTAL:	2	2	2	2	2	2	1	1	2	2	2	2	1	2	2	3	2	2	1	1	2	2	2	2	1	1	1	2	3	3	1

Wendy Lim, DMD
Approved by: Min Concepcion, DSD
Released: 7/23/2020



anaheim crest
NURSING CENTER

WORKING SCHEDULE

SMOKING TIMES: BASED ON

EXHIBIT 8

HURLING CENTER
CHARTER MONTHLY SCHEDULE
SEPTEMBER 2020

NAMES	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
7 to 3 Shift	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	T	W
CNA FT Blanca Zelaya	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Dany Alvarado	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Johanna Ortega	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Solidad Pasquel	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Edward Garcia	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Paul Sanchez	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Modesta Sanchez	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Julia Merla	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Griselda Espinoza	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Verónica Casique	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Yessica Rivera	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Vidiana Alvarado	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Mariela Cuevas	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Arlene Rivo	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Leticia Rodriguez	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
NEW HIRE	8	7	7	7	7	7	7	7	7	7	7	7	8	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7
TOTAL:	8	7	7	7	7	7	7	7	7	7	7	7	8	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7

NAMES	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
RNA	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	TU	W	TH	F	S	S	M	T	W
CNA PT Maximo Martinez	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Arianna Garciduenas	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Walter Marroquin	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CNA FT Edward Garcia	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
TOTAL:	1	2	2	2	2	1	1	2	2	1	2	2	2	2	1	2	1	2	1	2	2	2	2	1	1	3	3	2	2	2

NEW WIN

TOTAL:

ATTACHMENT D – Petitioner’s Exhibit 9

1:48



M

PETITIONER EXH. 9 - PAGE 1 of 3

Marx Dsd >

Hi, This is Yesica, I hope you are well. I wanted to warn you that due to the circumstances we are going through, it will not be possible for me to return on May 15. I have no one to take care of my girls. I wanted to know if it is possible that I can take one more month and come back June 17. Please let me know. Thanks a lot

Yes Yesica , you will need to come I.
And complete your extension.
Thank you
I am happy to hear from you

Anaheim crest is doing great too . We have been practicing good infection control and social distancing 👍

I'm glad to know that everything is fine. thank you very much

jue, may. 21 11:49 a. m.

Hola, how are you?
I hope you are safe ,

I have completed your renewal form for cna , when are you available to sign it and we can fax it here . Can you come here for about 30mins and we can finish it ?



iMessage



EXHIBIT 9

1:49



PETITIONER EXH. 9 - PAGE 2 of 3



Marx Dsd >

vie, jun. 12 4:07 p. m.

Hi, I hope you are well. I have the date to return on June 17, but for this month of June I can only work Monday and Tuesday

I would like to know if you could put me on the schedule to start working June 22,23,29,30 thank you very much

Yes, of course . Yay.

Welcome back 👍

So I start on Monday June 22. I really appreciate it thank you so much

Yes , I will speak to mrs manijeh and I will let you know Monday



Ok thank you

mar, jun. 16 12:07 p. m.

Hi ! sorry to bothered you i just wanted to know if you asked the administrator about my schedule?

Yes, we can accept you back, but we



iMessage



EXHIBIT 9

2:36



PETITIONER EXH. 9 - PAGE 3 of 3



M

Marx Dsd >

administrator about my schedule.

Yes, we can accept you back, but we would like for you to do a baseline test for covid

Where can I get Tested???

Here , but we will let you know , it will be next week or this week

Ok thank you so much

You're welcome

vie, jun. 19 10:45 a. m.

Hi Marx ! Graciela called me and she said they are doing the covid test right now. is it ok if i go right now?

I'll let you know

Thank you

vie, jun. 19 4:12 p. m.

Hi yesica , come here on Monday between 8am and 6pm, we will do baseline testing . After the results , you can come back 👍

Ok thank you 🙏



iMessage



EXHIBIT 9

ATTACHMENT D – Respondent’s Exhibit 5

Timecard Report

Time Card Report for 06/15/2020 To 09/15/2020- Hours Paid

By Department Worked - Last Name

Anaheim Crest Nursing Center

Paycode-Description									
Day	Date	Site-Dept-Pos	In	Out	Reg	OT	DT	Other Hours	Total Hours
11 - Nursing									
Employee: 302000722 Rivera Martinez, Yesica Belen									
Mon	6/22/2020	O4X - 11 - 1170	11:03 AM	11:15 AM	0.20	0.00	0.00	0.00	0.20
Mon	6/29/2020	O4X - 11 - 1170	10:53 AM	11:05 AM	0.20	0.00	0.00	0.00	0.20
Thu	7/2/2020	O4X - 11 - 1170	6:51 AM	11:00 AM	4.15	0.00	0.00	0.00	4.15
Thu	7/23/2020	O4X - 11 - 1170	6:54 AM	11:16 AM	4.37	0.00	0.00	0.00	4.37
	7/23/2020	O4X - 11 - 1170	12:01 PM	3:01 PM	3.00	0.00	0.00	0.00	3.00
Thu	7/30/2020	O4X - 11 - 1170	6:53 AM	11:22 AM	4.48	0.00	0.00	0.00	4.48
	7/30/2020	O4X - 11 - 1170	11:53 AM	2:55 PM	3.03	0.00	0.00	0.00	3.03
Thu	8/6/2020	O4X - 11 - 1170	6:50 AM	10:51 AM	4.02	0.00	0.00	0.00	4.02
	8/6/2020	O4X - 11 - 1170	11:21 AM	2:54 PM	3.55	0.00	0.00	0.00	3.55
Thu	9/3/2020	O4X - 11 - 1170	6:51 AM	10:47 AM	3.93	0.00	0.00	0.00	3.93
	9/3/2020	O4X - 11 - 1170	11:18 AM	2:58 PM	3.67	0.00	0.00	0.00	3.67
Employee Totals:					34.60	0.00	0.00	0.00	34.60